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4 SELECT COMMITTEE TO INVESTIGATE THE  
5 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,  
6 U.S. HOUSE OF REPRESENTATIVES,  
7 WASHINGTON, D.C.

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11 INTERVIEW OF: JUSTIN CLARK

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15 TUESDAY, MAY 17, 2022

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18 Washington, D.C.

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21 The interview in the above matter was held via Webex, commencing at 10:23 a.m.

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2     Appearances:

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4

5     For the SELECT COMMITTEE TO INVESTIGATE

6     THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

7

8     [REDACTED], SENIOR INVESTIGATIVE COUNSEL

9     [REDACTED] INVESTIGATIVECOUNSEL

10    [REDACTED] FINANCIAL INVESTIGATOR

11    [REDACTED] PROFESSIONAL STAFF MEMBER

12    [REDACTED], INVESTIGATIVE COUNSEL

13    [REDACTED], CHIEF CLERK

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18    [REDACTED], STAFF ASSOCIATE

19

20

21     For JUSTIN CLARK:

22

23     ROSS GARBER, ESQ.

1

2

3 [REDACTED] We'll go on the record at 10:23.

4

5 Good morning. This is the transcribed interview of Justin Clark conducted by the  
6 House Select Committee to investigate the January 6th Attack on the United States  
7 Capitol pursuant to House Resolution 503.

8

9 At this time, I'd ask the witness to please state your full name and spell your last  
10 name for the record.

11

12 Mr. Clark. My name is Justin Clark. The last name is spelled C-L-A-R-K.  
13 [REDACTED] So this will be a staff-led interview. Members may choose to ask  
14 questions, and if the members join, I'll just note that they've joined and I'll note for the  
15 record when they leave.

16

17 My name is [REDACTED] and I'm senior investigative counsel of the Select  
18 Committee and with me from the Select Committee staff are [REDACTED] present on  
19 line, investigative counsel; my colleague [REDACTED], investigative counsel.  
20 Our professional staff member, [REDACTED], is helping administer this; [REDACTED]  
21 [REDACTED], a financial investigator, and [REDACTED] -- oh, goodness. I'm sorry. I'm  
22 going to butcher this -- [REDACTED] I believe. I may have gotten that close, but she's  
23 [REDACTED] colleague, and we're all investigative staff.

24

25 Everybody that's on is with the investigative staff and we've confirmed that or  
they're the reporter. If somebody appears, we'll let you know if it's a member.

26

27 So at this time, I'd just like to ask that your counsel identify himself for the record.

28

29 Mr. Garber. Sure. This is Ross Garber and I represent Justin Clark.

30

EXAMINATION

BY [REDACTED]

1 Q Mr. Clark, you're voluntarily here for this transcribed interview. Correct?

2 A Yes.

3 Q I know you're an attorney. So please forgive me while I go over some  
4 ground rules that are probably quite familiar to you, but we do it for every witness,  
5 regardless.

6 So there is an official reporter transcribing the record of this interview and the  
7 reporter's transcription will be the official record of the proceeding. We have had to  
8 clarify with some folks that this will be the only recording. So we just want to make sure  
9 that neither you or your attorney are not recording the proceeding.

10 A I'm not. Yes, correct.

11 Q Okay. So please wait until each question is completed before you begin to  
12 respond and we'll do our best to wait until your response is complete before we ask the  
13 next question.

14 As [REDACTED] noted a moment ago, the reporter has a difficulty taking  
15 down when she can't see faces or when people give nonverbal responses, such as shaking  
16 or nodding their head. So it's really important that you respond to each question with  
17 an audible verbal response, and if your attorney wants to speak, please have him come  
18 on video so we know what's being said.

19 Please give complete answers to the best of your recollection. If a question is  
20 unclear, please ask for clarification. If there's a term that we're using that doesn't make  
21 sense, there's a few of us that has no campaign or political experience. So we may ask  
22 you to explain something that would seem very simple to you, but we very much  
23 appreciate your patience and clarification in those areas.

24 If you don't know the answer to our questions, please just say so. Sometimes it's  
25 really just a lack of clarity and we're happy to clarify if that's the case.

1           Logistically, just let us know if you need any breaks or if you'd like to discuss  
2 anything with your attorney, if you need a comfort break. We'll figure out lunch as we  
3 get closer, but we are happy to accommodate your schedule, your needs.

4           Just in terms of time, we anticipated this taking a bit, but I just want to check and  
5 see. Are there any hard stops or breaks that you know you need to take now?

6           A     No, there are not.

7           Q     Okay. Great.

8           I also want to note that our investigator, [REDACTED] entered the room and he is  
9 on the Select Committee staff.

10          So there may be several people asking questions and we'll try to keep it as  
11 organized as possible and, again, if you don't understand anyone's question, please just  
12 ask us to repeat it.

13          Do you have any questions before we begin?

14          A     I do not.

15          Q     Wonderful. So we will jump right in.

16          If you could just provide your full name and then any other names that you've  
17 used.

18          A     Justin Clark, Justin R. Clark, my middle initial.

19          Q     Does the "R" stand for something?

20          A     It stands for Reilly.

21          Q     Okay.

22          A     That's my grandmother's maiden name.

23          Q     R-I-L-E-Y?

24          A     No. R-E-I-L-L-Y.

25          Q     That's why we ask. Perfect.

1 And can you tell us your date of birth?

2 A [REDACTED].

3 Q Can you provide us with your residence address, cellphone, and email  
4 address.

5 A Sure. The home address is [REDACTED] in Arlington, Virginia.  
6 My phone number is [REDACTED]. That's my cellphone number, and email address,  
7 the one I use for everything is my Gmail, which is [REDACTED].

8 Mr. Garber. Do you have a work email address.

9 Mr. Clark. I have work email addresses too that I try to not use.

10 BY [REDACTED]

11 Q So your attorney beat us to that. I just wanted to confirm, from December  
12 2020 through January 2021, was that only cellphone number that you used, the [REDACTED]  
13 number?

14 A From December 2020 through January 2021?

15 Q Um-hum.

16 A Yes. Yes. That would have been the only cellphone number I used.

17 Q And the [REDACTED] that sounds like it was a personal email.  
18 Did you have a work email address?

19 A At that time, I would have either used my Donald Trump email,  
20 JClark@DonaldTrump.com, and that would have been for anything related to the  
21 campaign at that time, and then I had a few other work emails. The other one that I  
22 used a lot would have been Justin.Clark@electionlawllc.com.

23 During that time period, those would have been the two that I would have done  
24 the work through.

25 Q To the extent that you did, you mentioned that theDonaldTrump.com email

1 would have been campaign related. What would have been the bucket for  
2 electionlawllc.com in terms of what delineated the use between the two work emails?

3 A What delineated the use between those two emails was, really, other clients  
4 I had with Election Law, LLC and Donald Trump emails. So if I had a client other than  
5 Donald Trump that I was working on or helping at that period of time, I would have  
6 gotten emailed on that email address.

7 Q Gotcha. Okay. And did you have any Instagram or Twitter accounts  
8 during that time period?

9 A Yes.

10 Q Do you remember the --

11 A Yeah. I don't know what my Instagram handle is and I rarely post on that.  
12 I just kind of like monitor my kids on Instagram, but my Twitter account is @ChefJClark,  
13 C-H-E-F-J-C-L-A-R-K.

14 I don't remember what my Instagram handle is. It's probably the same.

15 Q And are those largely personal use or did you use those for work during that  
16 time period?

17 A Personal and work, you know, for commenting on political things or  
18 re-tweeting stuff for the campaign, I would have done that on Twitter. Instagram would  
19 have been completely personally, more than likely. I doubt I did anything political on  
20 there.

21 Q Okay. And can you just tell us your educational background going back to  
22 college.

23 A Sure. I graduated from Wesleyan University in Middletown, Connecticut  
24 with a B.A. I majored in economics and government. I graduated in 1997.

25 I got a master's degree in accounting from the University of Hartford and then I

1 graduated from the University of Connecticut Law School in 2004.

2 Q Then can we just go through -- in terms of your prior roles and  
3 responsibilities, I know you had quite a few. How about we just go from most recent  
4 back a few years.

5 I understand -- well, what is your current title now? Let's start with that.

6 A Well, I've got a couple different companies that I do work with. I'm a  
7 partner at Michael Best & Friedrich, a law firm in D.C. I'm a partner with Elections, LLC,  
8 which is a separate law firm that does political compliance work mostly, and then I am a  
9 partner at National Public Affairs, which does public affairs work and political campaign  
10 work on the consulting side, not the legal side.

11 Q Is that the company that you run with Bill Stepien?

12 A Yes.

13 Q Okay. And then Elections, LLC, that's a law firm, and who else is your  
14 partner in that?

15 That's a small one. Right?

16 A It's very small. The other founder of it with me, partner who runs it with  
17 me is Stefan Passantino, and then Alex Cannon works with us there and Nathan Groth is  
18 an associate-level attorney there.

19 Q Okay. And I believe at some point, you were on a leave of absence from  
20 Michael Best. That was probably while you were maybe with the campaign, but are you  
21 back full time there?

22 A No. I'm not yet. I'm not yet.

23 Q Okay. And so before that, at some point, you -- well, let me back up for a  
24 second.

25 Currently, do you work for a Trump entity or is your work for them through the



1 entities you just listed?

2 A Through the entities I just listed. I do work for Donald Trump's PACs  
3 through Elections, LLC.

4 Q Okay. So you are not currently employed by any of the Trump entities, but  
5 your entities do work for them?

6 A Yes. That's correct. National Public Affairs does some work for them too.

7 Q Okay. Prior to your work for these entities, did you have a role with the  
8 Trump Campaign?

9 A Yes, I did. I was -- so I believe I was paid through Elections, LLC, but I was  
10 the deputy campaign manager from July of 2020, end of July 2020, through, you know -- I  
11 don't know the time period. It would have been when I moved over to Save America,  
12 the PAC, doing work for them.

13 Then prior to that, I was a senior advisor on the campaign from December of 2018  
14 through July 2020.

15 Q And at all times, would your pay have been through Elections, LLC for those  
16 roles?

17 A I think so. There were probably a couple of months where I got paid  
18 directly from them at the beginning before Elections, LLC was set up. I think it was set  
19 up in March of 2019. So I would have gotten paid -- I just don't remember. I probably  
20 got paid directly from them.

21 Q If we wanted to try to figure out the date when you transitioned over to  
22 Save America from the campaign, would the FEC dates of disbursement from Save  
23 America to Elections, LLC be the beginning of that that you know of?

24 A It's hard to say. I mean, it probably lines up pretty closely, but it's hard to  
25 say specifically. I don't remember a clear bright line on that.

1           Q    Yeah.  What I mean -- and I apologize.  What I mean by that is it would be  
2   a reasonable ballpark to use given the time frame?

3           A    I think so, and I say that because post-January 20th, I did work on the  
4   impeachment.  I don't remember where I was getting paid from at the time, whether it  
5   was from Donald J.  Trump for President, Inc. Or Save America, but to answer your  
6   question, ballpark, it's probably pretty darn close.

7           Q    And just out of curiosity while we're on the topic -- we'll talk more about this  
8   later, but I don't want to forget -- who would determine where you were getting paid  
9   from, like the bucket that would pay you?

10          A    Interesting question.  So it's was really a decision as people were  
11   transitioning from the campaign to the PACs or out of the campaign to somewhere else.  
12   When the PAC was formed, I probably -- well, I did.  I spoke to the President about  
13   joining the PAC and had conversations with him about that.

14          So I think that was the determination, but, mechanically, I don't know like who set  
15   up the payroll that pays me and things like that, but he would have approved it.

16          Q    Okay.  We'll definitely come back to that.  So I'll put a pin in that, but  
17   that's helpful to know.

18          A    Currently, Susie Wiles runs Save America and kind of that constellation.  
19   She doesn't run them.  I don't think she's an employee, but she would probably be  
20   approving expenditures now in terms of those recurring.

21          Q    Is that somebody you -- through Elections, LLC, is that somebody that you  
22   submit invoices to or is that --

23          A    No, not -- at this point, I send them into the accounts payable system at Save  
24   America, but I think Susie approves all payments.

25          So I don't send her an invoice, but I think she receives all of the invoices for

1 approval in batches.

2 Q Do you know what her title is for Save America?

3 A I don't know if she has a title.

4 Q Okay.

5 A But she's in charge.

6 Q The person?

7 A The person, yeah.

8 Q Okay. So is it fair to say right now in terms of your current occupation,  
9 slash, means of employment, slash, sources of income, you've got National Public Affairs,  
10 Elections, LLC, and Michael Best. Am I missing any?

11 A No. I think that's it.

12 Q And briefly, really quickly, I just want to ask, you were given document  
13 requests as part of your voluntary agreement to appear here today. Correct?

14 A Yes.

15 Q Did you have a chance to read those document requests?

16 A Yes. I reviewed them with my attorney.

17 Q And I don't want get into the conversations that you had with your attorney  
18 and any of the counsel he provided for you. I just want to ask how did you search for  
19 responsive documents in response to those requests?

20 A I gave access to my hard drive and my email to my attorney, the document  
21 collection team that my attorney used, and they made searches based on that.

22 Q And was that @gmail.com account only?

23 A I don't remember. It was probably the Election Law, LLC account.

24 Q Okay. I'm sorry. Go ahead. I didn't mean to cut you off.

25 A No. I was done. I think it was just the Election Law, LLC account.

1 Q Do you still have access to your DonaldTrump.com account?

2 A No.

3 Q And did you search your phone, the [REDACTED] number, for text messages?

4 A Oh, yeah. We had discussed that. I had had a 30-day auto delete on all  
5 my text messages that I had set up a long time ago. So I did do a search of text  
6 messages. We did a search of text messages, but there weren't any that were  
7 responsive.

8 Q You said you had set up the 30-day auto delete a while ago. Do you  
9 remember when you set that up?

10 A The first time I learned about it, which was it was more than a year ago, a  
11 very long time ago.

12 Q No. What I mean, when you say it was a very long time ago, we're not  
13 talking about 10 years; we're talking about sometime during the last two or three?

14 A For sure, yes.

15 [REDACTED] All right. Are there any other questions on Mr. Clark's background  
16 or the document retrieval process before we move on?

17 [No response.]

18 [REDACTED] Okay. Mr. Clark, I'm going to turn it over to my colleague. [REDACTED]

19 [REDACTED] is going to ask you some questions.

20 [REDACTED]. Thank you [REDACTED]

21 BY [REDACTED]

22 Q Good morning, Mr. Clark. Can you hear me okay?

23 A Yes.

24 Q Okay. Great.

25 Thank you for your patience with this fully remote situation. We're having a

1 [REDACTED]. So I am doing this in isolation.

2 A Sorry to hear that.

3 Q Thank you.

4 So I just wanted to go over a couple of things, sort of basics, following up on some  
5 of the questions that [REDACTED] just asked you about your clients during the relevant time  
6 period, and then the bulk of my questioning today will really be about sort of a somewhat  
7 chronological walk through the time from the Election Day, November 3, 2020, through  
8 January 6, 2021 and to the extent there's possibly something a little bit relevant after  
9 that; but, generally speaking, that's the focus of the committee's investigation, obviously,  
10 and the focus of my questions for you today.

11 So I know you explained that you were employed as a partner at Elections, LLC  
12 during the entirety of that time period when you were serving as deputy campaign  
13 manager for the Trump Reelection Campaign; is that correct?

14 A Correct.

15 Q Okay. And did you have other clients in addition to the Donald Trump  
16 Reelection Campaign during that time period?

17 A From July of 2020 through --

18 Q [Gestures.]

19 A The short answer is yes. The longer answer is I don't recall servicing any of  
20 those clients from July of 2020 through January of 2021, only because of time constraints.  
21 It's not to say I didn't help out, but my partner, Stefan, took on the laboring oar of  
22 anything that was not related to the reelection campaign.

23 Q Okay. That's helpful and totally understandable in heat of a contested  
24 reelection campaign.

25 Just so that we're clear about where those privilege lines or relationships might

1 be, can you identify those other clients that you may have had an attorney-client  
2 relationship with even if you were not on a day-to-day basis providing legal services for  
3 them?

4 Mr. Garber. I think that, itself, is confidential, who his clients were.

5 BY [REDACTED]:

6 Q Okay. Maybe -- I take your point, Mr. Garber, but, Mr. Clark, let me walk  
7 through some of the other -- the types of interactions that we're going to ask you about  
8 today, and if as I'm asking you these questions, if any of those implicate other  
9 attorney-client relationships, you could flag them for me. Does that work?

10 A Sure.

11 Q Okay. Great. So I assume in your capacity as -- well, actually, let me back  
12 up.

13 So as deputy campaign manager, how would you describe the breakdown  
14 between your responsibilities as far as serving as a lawyer, providing advice for the  
15 campaign, versus your other duties?

16 A Sure. So my job as deputy campaign manager was broken up into a couple  
17 of different buckets. You have to remember July of 2020 is just months before the  
18 election. So there was a lot of work to do and a lot of triage.

19 So campaign leadership kind of broke up different roles and responsibilities for  
20 everybody. My main areas of focus were the budget, primarily the budget and getting  
21 our arms around the spend, not necessarily like directing what we should be spending  
22 money on, but getting my arms around the spend.

23 The convention was five weeks away and I was put in charge of making -- and it  
24 had just been cancelled in person. So I was put in charge of figuring out how to do that,  
25 and then I oversaw the General Counsel's Office. Matt Morgan became general counsel

1 and I became deputy campaign manager and I oversaw his work.

2 So that's how I would break that up.

3 Q Okay. That's helpful, and what, if you could assign a percentage, sort of  
4 just a rough estimate, what portion of your efforts were dedicated towards overseeing  
5 the legal operation and the General Counsel's Office?

6 Mr. Garber. In which time period though.

7 Mr. Clark. Yeah. In which time period are you talking about?

8

BY

9 Q Let's talk before the election first, so from July 2020 through Election Day.

10 A Twenty percent, fifteen percent. Matt really, really ran it and I would -- I  
11 spent a lot of time working with him. That was mostly related to the other bucket,  
12 which was budget, but yeah. Fifteen to twenty percent is fair, I think.

13 Q Okay. And how did that change after the election?

14 A It changed pretty significantly from the period of time from Election Day  
15 until about November 15th or so or just before that. Obviously, there was a lot going on  
16 post-election, right after the election, related to the litigation and things of that nature.

17 Q Okay. So from Election Day, November 3rd, through roughly the 15th of  
18 November, is it fair to say that litigation was a significant portion of your time then?

19 A Yes. That's fair to say.

20 Q Okay. And what changed on November 15th?

21 A Well, thereabouts, the President decided to change legal strategy and teams  
22 and I no longer had a direct role in coming up with strategy, overseeing litigation, and  
23 doing work like that.

24 Q Okay. We'll have an opportunity to talk about that in more detail later. I  
25 assume that what you're referring to is a shift in leadership to Mayor Giuliani and a team

1 of lawyers that he was working with. Is that accurate?

2 A Yes.

3 Q So during the time period from the election through January 6th -- so this  
4 would encompass the time period before Mayor Guiliani took over the leaderships efforts  
5 for the campaign as well as after. Who did you view as your client?

6 If you were asked to provide legal advice, who is the human being that you would  
7 be conveying that to?

8 A One of two people. It would have either been the President, himself, or  
9 the campaign as a corporate entity.

10 Q Okay. And who would the representatives of the campaign be in kind of  
11 practical terms that you would be providing legal advice to?

12 A Well, there wasn't really a -- it's hard to say. Okay?

13 I don't remember and I don't mean that as not -- I don't know what the org chart  
14 said, but there was a lot of people involved in the campaign even before the election, but  
15 particularly after, that needed to know or purported to sign off on things or didn't. So  
16 there was kind of just a group, and it's hard to remember if anybody said, Okay -- you  
17 know, there wasn't like one decider that said we're going to do this, let's go.

18 So there wasn't one person I kind of gave advice to.

19 Q Sure. That makes sense.

20 Who did you consider as part of that group that would have been, you know, sort  
21 of the representation of the campaign that you were providing advice to as an entity?

22 Mr. Garber. [REDACTED], it's Ross. I think what you're sort of getting at is a legal  
23 issue in terms who, legally, was his -- the client representatives, and I think what he's  
24 saying is he represented the campaign, and so anybody involved in the campaign could  
25 have technically come into the umbrella of his client.



1 I think that was his point.

2 [REDACTED] Okay. Thanks Mr. Garber. Understood.

3 BY [REDACTED]

4 Q I just want to make sure -- this is all sort of preliminary before we get into  
5 more factual questioning -- that I understand what your expectation was or  
6 understanding was about privileged relationships.

7 So, for instance, you've identified Matt Morgan, who was the general counsel of  
8 the campaign. So I assume you would have had attorney-client privileged conversations  
9 with Mr. Morgan; is that right?

10 A Yes. I presume I would have, yes.

11 Q What about Mr. Stepien?

12 A At various points, yes.

13 Q Okay. Another senior campaign official, Jason Miller, would you have been  
14 providing legal advice to Jason Miller at various times?

15 A Well, I wouldn't have been providing legal advice to him, but I would have  
16 been discussing campaign legal advice to him --

17 Q Would --

18 A -- at various points.

19 Q Sorry. I didn't mean to interrupt you.

20 A No. That's all right.

21 Q That's helpful, but you would have understood conversations with Jason  
22 Miller about campaign legal advice to be privileged communications, depending on  
23 circumstances and content?

24 A Sure. Yes.

25 Q Did you have any official role in the Trump Administration, a government

1       role?

2           A     I did.

3           Q     What was that?

4           A     I had two jobs. From January 20, 2017 through March of 2018, I was the  
5       director of intergovernmental affairs at the White House, and from March of 2018  
6       through December of 2019, I was the public liaison at the White House.

7           Q     Great. So during the time period that you were serving as deputy  
8       campaign manager, you no longer had those official government roles; is that right?

9           A     Yes. That's right.

10          Q     Okay. Great.

11                I know you identified the President, obviously as the candidate, your client to  
12       whom you would have been providing legal advice during this relevant time period from  
13       November 3rd through January 6th. Looking at that first time period, the 3rd through  
14       the 15th, approximately, how frequently were you in touch with, speaking directly with  
15       the President?

16          A     Pretty frequently. I can't -- I couldn't say for sure, but frequently is fair.

17          Q     Okay. Did that change after the change in litigation strategy or leadership  
18       around November 15th?

19          A     Yes. That changed.

20          Q     Okay. Approximately, how often or how can you characterize for us the  
21       change in your level of contact or interaction with the President?

22          A     It was far less frequent, but I can -- it's not like it went completely to nothing.

23          Q     Okay. Understood.

24                What about in the context of providing legal advice or in your role as a lawyer for  
25       the Trump Reelection Campaign, how much interaction did you have with Vice President

1 Pence?

2 A As a fair -- a good amount. I interacted with him a good amount, especially  
3 when I -- in the White House, I certainly did, and when I became deputy campaign  
4 manager, I dealt with him frequently.

5 Q And would you deal with him directly or through a lawyer and other  
6 members of his staff?

7 A Both.

8 Q During the time period from November 3rd through the 15th of November,  
9 approximately, how often did you interact with Vice President Pence?

10 A I can't remember. Not as frequently as with the President, but I can't  
11 remember.

12 Q Okay. What about after the 15th through January 6th; did you have  
13 interactions with Vice President Pence?

14 A I don't remember, but I don't think I did.

15 Q Okay. What about outside counsel that were retained to provide legal  
16 advice or representation to the Trump Campaign; what was your role in either retaining  
17 or supervising those lawyers?

18 A So, again, before July 2020, I didn't have a lot to do -- well, strike that.

19 I think that's -- I supervised Matt, who had like direct -- Matt Morgan, who had  
20 really direct interactions with lawyers representing the campaign. At times, I would  
21 interact with them, usually with Matt, but if he had the largest point of contact with  
22 them, I had some percentage subset with them, but I would say Matt was directly  
23 supervising them and I had less interaction than him, significantly less interaction than  
24 him.

25 Q Thank you. And did that change at all around the inflection point that you

1 identified for us earlier around November 15th?

2 A Yes.

3 Q How so?

4 A Many of the attorneys that we had brought on to represent the campaign on  
5 the outside either stopped representing the President or didn't talk to us anymore  
6 because we weren't supervising their work.

7 Q Focusing on the first part of what you just said, why did they stop  
8 representing the President?

9 A I don't remember specifically and I can only speculate, and I don't want to do  
10 that, but they -- I think the change in strategy was a part of that.

11 Q What, in particular, about the change in strategy made you think that?

12 A It was just the different approach to litigation, the different approach to how  
13 to, you know, go about post-election. They had signed up to work with us, doing things  
14 a certain way and that changed, and I don't think they were willing to stick around.

15 Q Okay. And, again, the change in strategy that you're referring to, is this  
16 associated with the new strategy implemented by Mayor Giuliani after taking control of  
17 the litigation effort?

18 A Yes.

19 Q Did you have any direct communication with outside counsel about this  
20 change in strategy or were those through Mr. Morgan?

21 Mr. Garber. And I think that would be covered by privilege and the work product  
22 protection. I think he can characterize sort of what he thought, but in terms of his  
23 interactions with the client and outside counsel, I think that's privileged.

24 [REDACTED] Thanks, Mr. Garber.

25 BY [REDACTED]

1           Q    For clarification, I'm not asking for the content of any of those  
2   communications, but just the existence of them, Mr. Clark.   Did you have any interaction  
3   with outside counsel about the change in strategy?

4           A    I don't remember specifically, but I may have.   I just don't remember  
5   specifically.

6           Q    Okay.   If you're thinking of them, are there any outside counsel that you do  
7   remember having interactions with?

8           A    Again, not off the top of my head.   I don't remember.

9           Q    Okay.   So there are several other -- so I think we've covered my general  
10   understanding of the key people, going back to my earlier question about who the folks  
11   were that you would have been talking to kind of under the umbrella of your privileged  
12   relationship or advice that you may have been providing to the Trump Reelection  
13   campaign.   Are there others that I have forgotten?

14          A    I don't think so.

15          Mr. Garber.   To be clear, it seems like you identified only, I think, three people,  
16   Matt Morgan, Stepien, and Jason Miller.

17          [REDACTED]   As well as the President and the Vice President, yes.

18          Mr. Garber.   As well as the President and the Vice President, but were there  
19   other people involved with the campaign who you would consider your communications  
20   were privileged at the time?

21          Mr. Clark.   Yeah.   I mean, Matt had a pretty good-sized staff working for him.  
22   The names will escape me and I apologize for that, but they would have all been covered  
23   and I would have had conversations with them at times, I'm sure.

24          The whole communications team, Tim Murtaugh, Erin Perrine.   Courtney Perella  
25   was a junior comms associate, Thia McDonald and others that I assume would be there,

1 but those are people that come to mind in terms of individuals that I probably would have  
2 had conversations that could be considered privileged.

3 Q Okay. That's very helpful. Thank you.

4 As we talked about you didn't have a formal government relationship at that time  
5 or a role, rather, but are there -- did you interact with the White House Counsel's Office  
6 at all during time period of November 3rd through January 6th?

7 A Yes.

8 Q In what capacity did you have interactions with the White House Counsel's  
9 Office?

10 A I'm not sure I follow. Like you mean as an attorney or like how do you  
11 mean?

12 Q I just mean the context. I assume that, as a lawyer for the campaign, that  
13 you were neither seeking or providing legal advice to the White House Counsel's Office.  
14 Is that correct?

15 A That's correct, yes.

16 Q So, generally speaking, what was the context of your interactions with the  
17 White House Counsel?

18 A Well, first, I had friends in the White House Counsel's Office when I worked  
19 there. So beyond getting lunch and just chatting, it would have been talking to Pat  
20 Cipollone and giving him updates on the campaign, updates on what was happening.

21 Yeah. I mean, it would have been that type of thing. I would have been in  
22 meetings with them when I was over at the White House at times, likely just Pat, but  
23 maybe Pat Philbin too, but other than those two and the kind of social component of  
24 friends from the White House Counsel's Office at the time, that would have been the  
25 extent of what I did with them.

1           Q    Thank you.   Setting aside the social component, having lunch and  
2   everything, really just focusing on the time period from Election Day through January 6th  
3   and more substantive interactions?

4           A    Yeah.   It would have been Pat Cipollone and probably Pat Philbin and it  
5   would have been either giving them updates on the campaign, just chatting about things  
6   generally, you know, White House campaign specific, or being in meetings with them at  
7   the White House.

8           Q    Thank you.   What about Eric Herschmann; is that a person that is known to  
9   you?

10          A    Yes.

11          Q    And what was his role during this time period after the election?

12          A    Well, I don't think he was ever in the White House Counsel's Office, to be  
13   clear; otherwise, I would have said his name.   Eric was -- Eric is a friend.   Eric was  
14   involved in helping us kind of navigate post-election and what to do and how to do it.  
15   He was on the inside, obviously, but he was very involved.

16          Q    Okay.   Thank you.

17                You said "us".   Who is the "us" that you're referring to with Mr. Herschmann  
18   helping to navigate post-election?

19          A    Matt Morgan and Jason Miller and, to a certain extent, Bill Stepien.

20          Q    So you're referring to senior officials from the reelection campaign?

21          A    Yes.

22          Q    Did Mr. Herschmann have an official role, duties for the election campaign?

23          A    Nothing that -- no, he did not.

24          Q    So and he, at the time, was, actually -- I take your point.   I should have  
25   made ore clear my transition coming after the White House Counsel's Office.   I also

1 share the understanding that he wasn't actually in the White House Counsel's Office, but  
2 was a lawyer working at the White House at the time. Is that fair?

3 A That's fair, yes.

4 Q So there's -- are there any -- well, another person who is in that category  
5 who I assume that you interacted with, generally speaking, during this time period, but  
6 did not have an official role with the campaign Mark Meadows, then the White House  
7 chief of staff; is that right?

8 A Yes.

9 Q So he was working as the White House chief of staff at that time. So,  
10 generally speaking, what were your interactions with him after Election Day?

11 A After Election Day, again, it would be kind of updates on where we stood  
12 with things. He would be over at the campaign headquarters at times. I'd be at  
13 meetings at White House with him on various things. We spoke by phone. He may or  
14 may not have texted me.

15 I mean, we communicated pretty regularly.

16 Q Okay. If it's helpful to go back to the breakdown that you provided us from  
17 the beginning, so from November 3rd through the 15th, generally speaking, how frequent  
18 were your communications with Mark Meadows?

19 A Probably, daily. I know he -- but a lot of those communications would be,  
20 you know, Jason or Bill would get a call from him and they'd talk and then they'd come  
21 into my office to ask me a question while he was on the phone or stuff like that. So I'm  
22 counting all of that, but probably daily.

23 Q Sure. Okay. And did that change after November 15th as well?

24 A Yeah. It became far less frequent.

25 Q And to what did you attribute that change with respect to your



1 communications with Mark Meadows?

2 A I just wasn't -- I didn't have the -- I wasn't running the strategy on  
3 post-election work and I didn't have a lot of insight into it. So that, I would attribute the  
4 same as before.

5 Q Okay. In your interactions with Mr. Meadows during the entirety of the  
6 post-election time period, they were with him in his capacity as White House Chief of  
7 Staff; is that right?

8 A I assume so. I don't know the delineation between kind of -- he was doing  
9 official work, I guess, as chief of staff, but, you know, the line, it's tough to draw between  
10 someone -- especially an assistant to the President. There's no real delineation between  
11 political work and official work during the time of the day.

12 So yeah. Official, he was kind always on the clock, I guess, is my impression.

13 Q Help me to understand that a little better. When you explain that because  
14 he's an assistant to the President, there's no real delineation between political and official  
15 work, is that -- I don't want to mischaracterize you.

16 A No. That's fair. I should have been a little more clear.

17 So when you are a commissioned officer at the White House, you're either an  
18 assistant to the President, a deputy assistant to the President, or special assistant to the  
19 President. You've got a different status with respect to political work during official  
20 business hours.

21 So if you're not one of those three people, if you're not a commissioned officer,  
22 you're limited to political activity during your time off time. I forget what the hours of  
23 the day they delineate are in the regs, but to your off time. If you're a commissioned  
24 officer, you're considered on duty 24 hours a day, seven days a week, and so you're  
25 allowed to do political activity at any time. You just can't use government resources for

1 it.

2 So my impression of him, there wasn't a clean line of when he was being a political  
3 person and when he was being chief of staff consistent with kind of anybody else who  
4 was an assistant to the President or commissioned officer at the White House.

5 Q Thank you for that. That's very helpful.

6 For the times that you're thinking of, especially during the time period after the  
7 election through January 6th, when Mr. Meadows was acting in a political capacity, what  
8 function was he performing?

9 A I mean, I didn't have a lot of context in terms of what he was doing on a  
10 day-to-day basis, but it would typically be a campaign update, you know, like how is this  
11 thing going, how is that thing going, what's new with this, what's new with that, I heard  
12 this, I talked to so and so, here's what they said, what do you think, that kind of political  
13 back and forth.

14 Q Okay. Did he have an official role with the campaign?

15 A No.

16 Q Was he a person who was providing you approvals or tasking the senior  
17 leadership of the campaign with work?

18 A That's a really good question and I don't quite remember, because, well, it  
19 was a while ago; but, more importantly, like I worked mostly in White House side with  
20 approvals for things. I worked mostly with Jared Kushner. Okay?

21 And so even if Mark or somebody else would come to me and say we need to do  
22 X, Y, or Z, if they weren't Bill Stepien or Jason Miller, who also worked with Jared, I would  
23 probably have asked Jared if we should do it.

24 So I don't want to say he was directing traffic just with respect to me, because I  
25 would have checked with Jared before doing something, had he asked me to do

1 something, particularly, spending money or retaining a lawyer, whatever.

2 Q Okay. That's very helpful.

3 During this time period after the election, did Mr. Meadows ever ask you for legal  
4 advice?

5 A Personal legal advice?

6 Mr. Garber. Which time period are we talking about?

7 BY [REDACTED]

8 Q Post-election. We can break it up into the two pieces if you want, but my  
9 question was just, generally, after November 3rd. Did you have communications with  
10 Mr. Meadows in which he asked you for legal advice?

11 A Personal legal advice?

12 Q In any capacity, either personally or perhaps in another capacity.

13 A I don't think so. I don't remember specifically, but I don't believe so.

14 Q Okay.

15 A He was never my client. So there wouldn't have been any personal legal  
16 advice I would have done. The only thing I can think of is I may have provided him or he  
17 may have been present during something where I was updating people on campaign  
18 strategy, but, again, I don't remember anything specific, but probably not, I guess is the  
19 right answer.

20 Sorry if I'm not super clear.

21 Q No. No. That's very helpful.

22 The circumstance that you may be remembering where you may have provided  
23 him with a campaign update with other people present, can you think a little bit more  
24 about that?

25 Who would have been the group that would included Mr. Meadows, but also have

1       been privileged, you know, communications related to the campaign?

2               A     All of the aforementioned people.   It could have been me and Matt  
3       Morgan, the President, quite frankly.   It could have been in meetings with them.

4               Mr. Garber.   To be clear, he's saying he doesn't remember any such interaction.

5               Mr. Clark.   Yeah.   I don't remember any specific interaction with him, must to  
6       be really clear, but I may have.   He may have been present is my point.

7

BY [REDACTED]

8               Q     That's helpful, but if you're providing -- if you're talking to the President in  
9       his capacity as a candidate and your capacity as a lawyer working for the reelection  
10      campaign, the presence of Mr. Meadows in those communications, did you perceive that  
11      to be a part of a privileged communication with your client, the President?

12              A     I would have, yeah.

13              Q     Okay.   Help me to understand that when it comes to Mark Meadows and  
14      his role as White House Chief of Staff or in a separate -- some separate kind of more  
15      political role.

16              Mr. Garber.   Again, I think we're talking about a legal issue now.   So if there's a  
17      particular meeting that you want to talk about, we can talk about it.   We're both talking  
18      about a legal issue and this hypothetical example, which he can't remember.

19              So maybe if we talk about it in the context of an actual thing, it will be more clear;  
20      otherwise, it's just a legal issue, I think.

21              [REDACTED] Yeah.   I take your point, Mr. Garber.

22

BY [REDACTED]

23              Q     And, Mr. Clark, we will get through the kind of chronological, roughly  
24      chronological, discussion about this post-election time period, but just so that my  
25      expectations are set and we understand what the privileged relationships are, if they are

1       implicated by later conversations or meetings, documents that I may be able to show you,  
2       do you remember any meetings with the President where you were there in your capacity  
3       as a lawyer for the campaign where Mr. Meadows was also present?

4             A     I don't remember that.

5             Q     Okay.   And what about any text messages?

6             A     Just also to be really clear, he was often in and out of meetings with people.  
7       So, again, I just don't remember.

8             Q     Sure.   No problem.   And to Mr. Garber's point, hopefully, when we go  
9       through this, we'll be able to jog your memory about specific meetings and who was  
10      there and that will be a little bit more helpful, I think, to remember the various  
11      participants.

12            What about, before we move though, text messages with Mr. Meadows; do you  
13      recall exchanging any text messages with Mark Meadows that you would have been  
14      providing legal advice?

15            A     I don't recall any.

16            Q     Okay.   Thank you.

17            Then the other thing that may come up -- I don't think it's going to be a big factor,  
18      but did you have communications with other elected officials, in particular, member of  
19      Congress during the post-election time period?

20            A     I'm sure I did, but I don't remember.   I don't remember specifically who or  
21      when.

22            Q     Would any of those have been any members of clients -- sorry.   Let me  
23      rephrase.

24            Would any members of Congress have been clients of yours?

25            A     Members of Congress been clients?   No, not on the legal side.   I can't say,

1     you know, one of my partners or someone I worked for did mail or something on the  
2     political consulting side, but certainly not on the legal side.    I didn't have an  
3     attorney-client relationship with anyone in Congress that I would have spoken to.

4             Q     That's very helpful.    Thank you.

5             Let's go back to Election Night, November 3, 2020, and like I said, I don't want to  
6     overpromise chronological, because I will jump around a little bit, but roughly speaking,  
7     we're going to go from Election Night through January 6th.

8             So why don't we start.    Where were you for Election Day, November 3rd?

9             A     So on November 3rd, I did what I always do and I got to the office right  
10    before the polls opened.    It's just more superstition than anything.

11            We had -- I met with Nick Trainer, who also got in there early and, you know, we  
12    just kind of gave our final take on how we thought things would come out.    We were all  
13    wearing suits and ties, which is very odd on a campaign.    It was a hoodie and jeans type  
14    of operation, which was great, but we were all wearing suits and ties because the  
15    President was coming over to give everyone -- basically, to say -- we were going to give  
16    him briefing and he was going to say thank you to everybody.

17            He came over in the morning at some point.    We gave him a briefing in the  
18    conference room at the campaign.    By we, it was me and Bill Stepien.    Mr. Meadows  
19    was there.    I believe Jared Kushner was there, I believe Nick Trainer, and we just gave  
20    him an update on where we thought the race was.

21            He then walked around the campaign office and gave remarks to everybody.  
22    Nick and I then went down to the motorcade because we were going to the White House  
23    to set up the kind of war room operation to track votes, make sure everything was all set  
24    for that day.

25            So then we went down to the motorcade.    We waited there, went back to the

1 White House, went in. The President again spoke to some of our campaign people that  
2 were at the White House. Nick and I accompanied him up there.

3 Then we went down to get COVID tested before going over to the residence, and  
4 Nick and I went over to the Map Room at the White House to make sure everything was  
5 set up, and then kind of the day -- I don't think I left the White House that day.

6 Q Okay. Thank you for that overview.

7 Nick Trainer, what was his role with the campaign?

8 A Nick was originally head of delegates and party organization, which was  
9 something that Bill Stepien -- the only thing that Bill Stepien and I oversaw prior to taking  
10 over as the role as campaign manager and me as deputy, and that was in charge of what  
11 it sounds like, delegates, outreach to state party chairs, work with state party chairs,  
12 things like that, basically, setting up the convention and the actual operational voting of  
13 the convention, which is a lot more work than people hear about, and when you do hear  
14 about in the news, it usually means something went terribly wrong. We took great  
15 steps to make sure we didn't do that.

16 Nick then took over as the battleground states director. So he was, basically, in  
17 charge of directing traffic on travel. He was coordinating data and polling for the  
18 campaign and, basically, tracking that piece of the operation. I mean, moving the  
19 President around, as you can imagine, is a monumental task. So he was the guy that  
20 coordinated everybody.

21 So I think he was at meetings or on calls with the Secret Service, President  
22 Advance, White House Military, everybody on an hour-by-hour basis. It was a lot of  
23 work and he was in charge of targeting.

24 When we got to the Map Room that day, [REDACTED]  
25 [REDACTED] which was just a gut

1       punch, because he knew all of it in terms of he was a real critical part of our Election Day  
2       operations team at the White House.   So that was tough.

3               Q     Understandably.   So before that unfortunate event, taking Mr. Trainer out  
4       of Election Night, going back to the briefing that you said that you gave to the President  
5       and, actually, before that even, you said that you and Mr. Trainer had sort of touched  
6       base on the morning of Election Day, talking about how the day was going to go.   Am I  
7       accurately recounting what you told us a few minutes ago?

8               A     Yes.

9               Q     That first conversation with Mr. Trainer, generally speaking, what was the  
10       conclusion or what were the conversations between the two or you of how you thought  
11       the day was going to go?

12              A     Keeping in mind that our polling and our internal data -- and these were  
13       people who had gone through 2016 as well -- we were actually quite bullish on Election  
14       Day in terms of how we thought the results would be.   Nick, I think he said to me it's  
15       going to be tight as a tick.   It said that's probably about right.

16              We went through states of who we thought was going on win and who was going  
17       to lose, and we kind of had some -- we all had our lists of counties around the country  
18       that were kind of bellwethers that we really wanted to take a look at and make sure we  
19       did well in.

20              I remember thinking, you know, the early votes coming out of Florida was going to  
21       be really important.   The votes were going to be counted in Florida very early.   We  
22       thought that was going to be an important bellwether, Ohio, and they were going to  
23       dictate how we did elsewhere, we thought.

24              So we thought it was going to be a really tight, a really tight election.

25              Q     What was the message, setting aside the part of the President's arrival at the



1       headquarters thanking staff, but how was the day going to play out, predictions; how  
2       much of that, what you just described, was shared in the briefing with the President?

3             A     I don't remember specifically what we briefed him on, but what we probably  
4       did was what we always did, which was to go through the latest round the polling results  
5       with him, and I am sure that one or all of us said this is going to be really close.

6             Q     What was the President's reaction?

7             A     I don't remember specifically, but it was -- he understood.

8             Q     Understood that it was going to be very close?

9             A     He understood our take on it.    I think he was much more optimistic, to be  
10      really fair.   He always was, but he understood where we were coming from.

11            Q     Understood.   So your point is he heard you and understood your  
12      perspective even though he may have had a more optimistic approach; is that fair?

13            A     Fair.

14            Q     Did you speak with him again when you arrived at the White House at any  
15      point on Election Day, like before polls closed?

16            A     Yes.   So I walked with him and Jared up into the EEOB, the Eisenhower  
17      Executive Office Building, up to one of the conference rooms where he had a bunch of  
18      campaign staff that he was going to speak with.   I spoke to him on the walk up.

19            We may have talked about golf for all I know, but I don't think there was any  
20      substantive conversation with respect to Election Day at that point.   It's a quick walk.

21            Q     Understood.   What about after polls closed; did you speak to the President  
22      again?

23            A     I did.   I would have spoken to him very late in the evening, not one on one,  
24      in a large group of people upstairs in the residence.   I mean, it was probably after  
25      midnight, but before that, I was not one of the people having direct conversation with

1 him.

2 Q Okay. And I think I interrupted you with a couple of questions, but if you  
3 want to return to generally telling us what else occurred on Election Day Night, that  
4 would be helpful. So I know you told us that you got up to the White House, got  
5 everything set up in the Map Room. [REDACTED]

6 How did the rest of evening proceed, starting from when you started to get polls  
7 closing and returns in?

8 A So Election Night is always kind of a blur for me and I for everybody, because  
9 things start happening fast and you make fast decisions. We were tracking results in the  
10 war room.

11 Florida came in great. I mean great. Ohio, my number was and over-under of  
12 500,000 votes in terms of a margin and it was looking great.

13 You've got to remember that none of these states occur in a vacuum in terms of  
14 like the type of voter. So if I'm in Florida and I've got northern Florida voting one, I can  
15 impute certain things about southern Georgia voting that way, or if I'm in eastern Ohio, I  
16 can impute what western Ohio is going to look like, because they're communities of  
17 interest. They're all kind of the same in a lot of ways.

18 Anyway, that looked great. North Carolina looked great. We were picking up  
19 our votes. The way -- I'm going to just nerd out for a second here. The way states  
20 operate in terms of the way they count votes are 50 different ways of doing it. Okay?

21 And so, for instance, Florida counts -- well, wait. Let me give a better example  
22 that I'm a hundred percent sure of right now.

23 North Carolina counts Election Day votes last. So it's first in vote, first out vote.  
24 Other states count Election Day first and work backwards to the beginning of a mail-in  
25 period of time.

1           So depending on that, you can kind of get a sense of how it's going to go, and if  
2           you have the Election Day vote modeled correctly and the mail-in voting modeled  
3           correctly, you kind of know -- you can figure who's going to win. In a lot of these places,  
4           we didn't have models because they never voted by mail before or the volume was  
5           different.

6           Like in North Carolina and Florida, we had a pretty good sense of what it was  
7           going to look like and it was coming in over estimates. So we felt great until later than  
8           evening when Arizona came in.

9           I had stepped out of the war room for a few minutes, and when I came back, they  
10          had called Arizona. Fox News had called Arizona, and the mood changed in the count  
11          room, and even to this day, I think Fox called it prematurely, because they had no way of  
12          knowing at the time how the result was going to come out. It was exceedingly close at  
13          the end, but that changed the tone of the room.

14          Q     Okay. So that was about 11 p.m. Eastern Time when Fox called Arizona.  
15          Is that --

16          A     That sounds right, but, again, you lose track of time.

17          Q     Right. Yes.

18          A     I assume that's correct. That sounds right.

19          Q     And so before that time, were you -- did you go up to the residence and  
20          interact with the President at all before that?

21          A     No.

22          Q     Okay. And he wasn't down in the Map Room with you at all before Arizona  
23          was called?

24          A     I don't think so.

25          Q     Okay. So tell us a little bit more about the effect of the -- you just told us of

1 the mood changing after Arizona was called. What do you remember about what  
2 happened then?

3 A Well, I just remember -- you know, I had always had concerns about Arizona  
4 just from a political context. So did Nick Trainer. He and I were both concerned about  
5 Arizona, and it wasn't necessary in our mind for that to have a pathway.

6 We always talked in the campaign a lot about optionality. The reality is like we  
7 had multiple maps that could get the President reelected. Arizona wasn't a part of most  
8 of them. We could do it without Arizona. We had other states. Other stuff had to  
9 happen. Don't get me wrong, but I felt our whole job at that point was to tell everyone  
10 to take a deep breath because, "A", I thought it was a premature call. They didn't have  
11 nearly enough votes counted and, "B", there were other paths to winning at that time;  
12 but it was a sour mood at that point in that room.

13 Q Okay. Were you with the President when he was told about Fox calling  
14 Arizona?

15 A No. I don't think I was. I don't remember speaking to him except like well  
16 after midnight that evening.

17 Q Okay. Did you ever come to learn from any of your colleagues how the  
18 President was informed about Fox calling Arizona?

19 A I don't remember. There were so many books written about it and news  
20 reports and everything. Like I don't remember where I heard that from.

21 Q Okay. Would it be consistent with your recollection and as has been  
22 publicly reported that Mr. Kushner informed the President that Fox had called Arizona?

23 A It wouldn't be inconsistent with my understanding or what would happen,  
24 but, again, I don't know.

25 Q Okay. Did you ever hear directly from the President or come to learn from

1 any of your colleagues about what the President's reaction was to learning that Fox had  
2 called Arizona?

3 A Yes.

4 Q What was it?

5 A He was upset, is what I heard and was upset with Fox News calling it so soon,  
6 is my understanding, and he had asked some members of the campaign to go and talk to  
7 Fox about that early call, but I don't know who did what, but that's what I came to learn.

8 Q Okay. Were you involved any of those communications with Fox?

9 A I don't think so. I may have been on a call. I don't remember being  
10 involved. I certainly wasn't asked to call anybody.

11 Q Sure. Okay. And if you do remember, who was asked to contact Fox  
12 about their calling Arizona?

13 A Again, this isn't directly at the time. This is what I learned after, but Jared  
14 Kushner and Jason Miller.

15 Q Okay. So what else do you remember about the Arizona call? What else  
16 occurred before you said that you did talk to the President after midnight that evening?  
17 What else happened in between the Arizona call and your seeing the President?

18 A There would have been multiple conversations with Bill Stepien, Eric  
19 Herschmann. Ronna McDaniel, chair of the RNC, was in the room quite a bit.

20 I would have talking to Matt Oczkowski, our data person who was kind of running  
21 the count at that point. Mr. Meadows was in quite a bit. We would have talked to  
22 him.

23 There was a conversation. I think it was one of those rooms down there. I  
24 think it was the China Room, to be honest with you. I can't remember who else was  
25 there, but it would have been me and Mr. Meadows and either Bill Stepien and Jason

1 Miller or one of the two, and it was the first time I really spoke to Mayor Guiliani, who  
2 came in and had thoughts on the election so far.

3 Q Okay. Why don't you tell us more about that interaction. What was the  
4 conversation about, generally?

5 A I mean, the conversation was generally about Mr. Meadows or Bill  
6 Stepien -- I think Rudy had spoken to the President and Mr. Meadows or Bill wanted some  
7 of us to go talk to Rudy so he could express his thoughts and concerns with respect to  
8 Election Night, and he was talking about Pennsylvania. We had had issues, even  
9 post-election issues, with access to observe the counting of ballots, and I think it was  
10 about -- it all came down to like him having certain ideas about the count not going right,  
11 and I think it was just Pennsylvania, but I can't be quite sure.

12 It was mostly there -- we were mostly there to like have a conversation with him  
13 so he could kind of vent so he wouldn't go talk to the President more, not because we  
14 necessarily cared what he was going to say, but like it just wasn't productive.

15 Q Understood. And what you remember Mr. Guiliani kind of venting about  
16 was primarily issues related to access by observers to counting the ballots in  
17 Pennsylvania?

18 A Access for observers and kind of the number of mail-in ballots that were  
19 coming in and that they weren't counting them in a timely manner. It was all kind of  
20 related to that issue.

21 Q Okay. Did Mr. Guiliani give you any indication of the basis for his concerns  
22 or opinions about those issues?

23 A I don't remember any specific bases.

24 Q Did you ever come to understand what the basis was for him expressing  
25 these concerns or where he was receiving this information?

1           A     Well, to be fair, his concerns were we can't see what they're doing. They  
2     are correcting -- they're curing ballots, meaning they're taking a ballot that would  
3     otherwise be invalid and fixing it so it's not.

4           I believe that, I think and believe, that there was probably ballot curing going on  
5     there, which is why we were kept out, but I didn't have any direct evidence of it and he  
6     certainly didn't at that point either.

7           Q     Help me understand. What do you mean by ballot curing?

8           A     So every jurisdiction is different, again, in terms of counting. Some states  
9     allow for a curing period of ballots that come in that aren't filled out. They don't have a  
10    date on it or there's a box checked that's missing.

11          Some states have rules that say as long as we can figure out voter intent, we're  
12    going to count the ballot. Other states say we're not going to count the ballot, but we're  
13    going to allow for a curing period of time when an election worker can call the voter and  
14    say you have five days to come in and cure your ballot. Other states prohibit it.

15          Pennsylvania, I don't want to say it was a strict prohibition, but it was a pretty  
16    strict state in terms of ballot curing, and the operating thesis was with all these mail-in  
17    ballots that arrived in Philadelphia, there was a lot of ballot curing going on by people  
18    who were counting those votes and that's why our election workers were kept at a  
19    distance or out of the room entirely, so we couldn't see them doing it.

20          Q     And --

21          A     That was --

22          Q     I'm sorry. I didn't mean to interrupt you.

23          A     I was just saying that was the theory I believe he was operating under at the  
24    time and it's something I was sympathetic to, and I don't think it didn't happen, but he  
25    didn't have any direct evidence at the time, certainly.

1           Q    Okay.  And when you referred to mail-in ballots coming to Philadelphia in  
2   the context of this kind of concern, you're referring to absentee ballots that were  
3   submitted by mail?

4           A    Yes.

5           Q    And did you ever -- stepping outside of Election Night and this conversation  
6   with Mr. Guiliani, did you ever come to learn any evidence that would support Mr.  
7   Guiliani's fear that there was something improper or illegal going on with respect to the  
8   counting of ballots in Pennsylvania?

9           A    No.  I was -- two things kind of happened.  One, being kept out, once that  
10  ballot gets cured and counted, there's no way to kind of prove the negative, that it didn't  
11  happen, which is unfortunate frustrating.  The other thing is when I got pushed out in  
12  the middle or early side of November, I wasn't in a position to really figure out that  
13  investigation anymore myself.

14          Q    Okay.  Thank you.

15                So just going back to this conversation that you recall having in -- I think you said it  
16  might have in the China Room at the White House with Mr. Meadows, Mr. Stepien, Mr.  
17  Miller, and Mr. Guiliani --

18          A    Yeah.  It might have been just Bill or just Jason.  I just can't remember if  
19  they were both there.

20          Q    One or both.  Okay.  Great.  Thanks for the clarification.

21                In addition to the theory or concern about the counting of ballots in Pennsylvania,  
22  do you remember anything else that Mr. Guiliani said?

23          A    I don't.  I don't.

24          Q    Was there any discussion of the President's remarks to be given that evening  
25  during this conversation?



1           A    I don't remember. It wouldn't shock me, because I think it was pretty close  
2 to the time when he was going to give his remarks, but I don't remember specifically.

3           Q    Okay. And what do you remember about Mr. Guiliani's demeanor during  
4 this conversation?

5           A    He was pretty passionate, like borderline belligerent.

6           Q    Okay. We have received testimony and evidence in our investigation that  
7 indicates that Mr. Guiliani may have had too much to drink, that he was visibly  
8 intoxicated that evening. Is that consistent with your recollection?

9           A    I want be charitable because I don't know if he was drinking or not and his  
10 personal circumstances, but that's consistent with his demeanor.

11          Q    So before your conversation with the President that you referred to earlier,  
12 any other meetings or conversations about the status of the election that evening that  
13 come to mind?

14          A    It's really quite a blur. It would have been conversations about results in  
15 specific states, counties that were still outstanding. There was a lot of slow counting  
16 going on because of the number of ballots.

17                So as a person who likes resolution to things fast, it was rather frustrating for me  
18 and I can't imagine what it was like for the candidate and family members, but it was just  
19 going to take a long time. It became pretty clear that this count was going to take quite  
20 a long time.

21          Q    Understood. Did you have any update to your assessment about the  
22 likelihood of success?

23          A    No. I really still thought it was going to be tight as a tick. I tell you what.  
24 At that point, I do believe Arizona was called entirely too early. I mean, the count didn't  
25 really get resolved until about 10 days later where we knew we were going to lose based

1 on our data and our modeling, and our data and our modeling was like pretty close.

2 Georgia, we had a lead that we thought was going to hold and our data analytics  
3 team told us that it would. Pennsylvania, there was like 700-, 900-, 800,000-vote lead  
4 and there were a ton of ballots to be counted that no one could quantify.

5 In Wisconsin, there were major concerns with respect to the handling of absentee  
6 ballots, an issue that was eventually brought all the way up to the Wisconsin Supreme  
7 Court. I think it was ruled on in December, I think a four-three vote. That was wide  
8 open.

9 So it was still wide open. It was still going to be tight as a tick was my  
10 assessment at that time.

11 Q Understood. Okay. So tell us what happened when you did speak to the  
12 President that evening.

13 A My conversations with the President were with a large group of people up at  
14 the main hall of the residence of the White House as he was preparing his remarks. I  
15 don't remember the specifics of what I said. I don't, but it would have been some kind  
16 of update with respect to the count, with voting, with mail-in ballots. That's why I was  
17 there, I presume, but when I say -- it was a full house. The kids were there. Mr.  
18 Stepien was there, Mr. Miller, Stephen Miller and his speech-writing team. The staff  
19 secretary was there, all like kind of working on remarks and pulling stuff together.

20 I don't remember the specifics. Again, it was a lot of blur, but mostly, it was  
21 working on remarks and trying to get an update on what was happening.

22 We got on the phone at one point. I don't remember if the President was there  
23 or not. We got on the phone with the team in Pennsylvania to provide an update at one  
24 point.

25 Yeah. That's -- those are kind of my memories of it, and then we all -- the

1 stairways and the elevators are really narrow and tight there, and I remember it was kind  
2 of a gong show, everybody trying to pile through to get downstairs so he could give his  
3 remarks. I remember that pretty specifically. I waited for a minute because it was  
4 just -- someone was going to trip and fall and it was going to be a comedy going down the  
5 stairs.

6 So I remember that, and then we all went to the Blue Room, kind of went to the  
7 back staircase of the Blue Room, the Green Room where he tightened up his remark, and  
8 then he went out and gave his remarks. I believe it was at that point when he started  
9 giving his remarks -- I mean, I usually never stuck around for his remarks. I would always  
10 go watch him on TV, because in my job, I cared way more what it looked on television.  
11 So I walked down to the Map Room and watched his remarks on the TV there.

12 Q Okay. That's very helpful.

13 Just to go back and clarify a couple of things about what you just told us, so big  
14 crowd in the residence and thanks for those that you remembered being there. You  
15 said that the focus was really about preparing the remarks.

16 Did you have a sense of who was responsible for drafting the speech or remarks  
17 that the President would give?

18 A It would have been Stephen. So Stephen Miller was really the guy who  
19 drove a lot of the remarks for the President. Derrick Lyons was a staff secretary, would  
20 have assisted in that and then Gabe. I forget his last name. I didn't know him  
21 particularly well, but he was the teleprompter operator and he would -- he always played  
22 a role, but that was just more of like of a scrivener, like, Hey, we've got to load this thing  
23 in and it's got to look right and getting the cadence right, but Gabe would have been  
24 involved there as just kind of like typing.

25 Q Got it. Was Mr. Giuliani there in the residence?

1           A    I don't think he was, but I don't remember.    I mean, it was a big crowd.    I  
2   say I don't think he was because I don't remember him saying anything.

3           I think there were other meetings up in the residence prior to me going up late  
4   that night and, again, I think that's based on press reports.    I'm not sure anyone told me,  
5   but I have to imagine that because of our conversation in the China Room, he had been  
6   up talking to the President, because that's why I think I was there, to like have -- to be his  
7   person that he could vent to.

8           Q    Understood.    Okay.    Were there any other lawyers associated with Mr.  
9   Guiliani present there?

10          A    Of Mr. Guiliani?

11          Q    Yes.

12          A    I don't remember.

13          Q    Okay.

14          A    His son, Andrew, worked at the White House.    Sorry to interrupt.

15          Q    No, no?

16          A    His son worked at the White House and I'm sure he was hanging around that  
17   night, but I just don't remember him being around, nobody else that I recall.

18          Q    Are you familiar with Boris Epstein?

19          A    Yes.

20          Q    Was Boris there with Mayor Guiliani that evening?

21          A    I don't know if he was with Mayor Guiliani that evening or not.    I think he  
22   was there, yeah.

23          Q    Do you remember him being in the residence when you were there?

24          A    I don't remember him being there.    That doesn't mean he wasn't, but I  
25   don't remember him being there.

1           Q    Okay.  Were you -- did you participate in any conversations with the  
2   President about whether he should declare victory, whether he should that say he won  
3   the election versus some other outcome?

4           A    What do you mean by participate?  Like I say that because in that big  
5   meeting, those conversations were happening when they were discussing his remarks.  
6   We all know what his remarks were.

7           Q    Right.

8           A    And there were definitely conversations about that in that big meeting.  I  
9   don't think I ever weighed in other than giving an update on where we stood with respect  
10  to the count.

11           I don't think I ever said you should say this or you should say that or you shouldn't  
12  say this or shouldn't say that.  I don't think I ever weighed with respect to those  
13  remarks, but went I present there when those conversations were being had, the answer  
14  is yes.

15           Q    Just going back to, you know, I hear you saying you don't think you weighed  
16  in about whether or not he should say that he had won the election, but in the course of  
17  your providing an update on the status of counting and the status of the election, did you  
18  tell the President that he had won?

19           A    No.  I wouldn't have said that.

20           Q    Okay.  What would you have said?

21           A    I would have said we -- I would have told him the truth, which I always did,  
22  which was at the time like, Hey, this still looks really good, like I don't know where this is  
23  going to come out tomorrow, and I gave him the update that I just gave you:  Georgia,  
24  we had a lead.  Pennsylvania, there was still way to many ballots outstanding.  I  
25  thought they called Arizona wrong.  There were issues with the absentee ballots in

1 Wisconsin that we needed to deal and would deal with.

2 So it was still open. It was an open question.

3 Q Okay. Open question as to the outcome?

4 A What I would have said is, you know, I don't think this thing is over by a long  
5 shot. I would have said that to him, something along those lines. I don't remember  
6 the specific words that I used, but that's what I would have said.

7 Q Okay. So for the rest of the conversation, even if you weren't asked or  
8 didn't actually weigh in about what he should say, but in the rest of that group  
9 conversation, did anyone advocate for a different position than what would be the  
10 natural implication of what you just said, which is that -- like you just told us, that it's not  
11 over by a long shot yet?

12 Were there other voices advocating that it was over?

13 A I don't remember that. Everyone would have looked to me or to Bill.  
14 Frankly, they would have looked to Trainer if [REDACTED],  
15 but they would have looked to us to say what the status of the race was, and I don't think  
16 there was any daylight between what Bill and I thought about where the race was at that  
17 moment.

18 Q Got it. So is it fair to say that you don't remember anyone giving an  
19 assessment or advice to the President that was different than what you and your  
20 colleagues viewed, which was that it was still possible to win, but it was still tight and the  
21 election was not over yet?

22 A I don't think anyone -- no. No one would have said that. They would  
23 have gotten an earful from me and Bill, because nobody in that room was from the  
24 political department or the field department to count votes. No one had access. They  
25 could talk to them, but no one was talking on a regular basis our data analytics team.

1           So we were the ones everyone would have looked to, and if someone had said,  
2   Well, no, or they disagreed, it would have turned into some kind of argument, because  
3   we would have said, No, you're all wet, like what are you talking about.

4           I don't remember that happening.   So I don't think anyone gave a different  
5   assessment of the election at that point.

6           Q    Okay.   Thanks.   So did you observe any other, even if you didn't  
7   participate, but did you observe any other conversation that night before the President's  
8   remarks about   what he should say about the outcome of the election?

9           A    So I'm sure I did observe it, okay, in terms of what was spoken, what was  
10   said.   I also don't remember what that was and the likelihood is because my job at that  
11   moment was to give an assessment of the politics of it.   I never weighed in on speeches.  
12   I rarely weighed in on speeches, because that wasn't my bailiwick.

13           So was I there?   Was I present when they were talking about the wordsmithing  
14   of a document and what he should say?   Yes.   Do I remember what was said?   No,  
15   and I probably don't remember because, "A", it was a long time ago and, "B", I was  
16   probably on my phone, looking at numbers, doing something else.

17           I just didn't -- that wasn't my area.

18           Q    Understood.   Do I remember who, if anyone, advocated for the President  
19   to say he had won the election?

20           A    I don't remember specifically.

21           Q    Okay.   Did you later come to learn who had, if anyone?

22           A    No.   I don't remember, period, who, if anybody, advocated that the  
23   President say those things.

24           Q    Okay.   I did want to follow up on one other thing.   You said that you got  
25   on the phone with the team in Pennsylvania.   Who, in particular, did you speak to in

1 Pennsylvania?

2 A I think we called Mike Roman, who was on the ground in Philadelphia.  
3 Mike just -- and I think we called Mike even though he wasn't the state director or  
4 anything like that, because Mike has been doing Pennsylvania sick politics forever and he  
5 was working Election Day operations for the RNC and the campaign. So he had a good  
6 sense of what was going on on the ground there.

7 Q Okay. So we have received testimony that Mayor Guiliani did suggest to  
8 the President that he should go out and declare victory, saying that he won the election  
9 outright and that others, including Jason Miller, told the President that he should not  
10 declare victory until he had a better sense of the numbers.

11 We also got -- is that with your consistent with your understanding or any later  
12 conversations you had with Mayor Guiliani or Mr. Miller?

13 A Yeah. That's consistent with what I heard after the fact. I don't  
14 remember observing that conversation. I don't think I was in the room for it, but that's  
15 certainly consistent with what I came to understand what happened and consistent with  
16 like the overall context of those meetings.

17 Q Okay. Thank you.

18 We also received testimony that Mayor Guiliani had a sort of verbal altercation  
19 with either you or Mr. Stepien about this topic, that there were, you know, strong words  
20 exchanged, including expletives about the possibility that the President would go out and  
21 declare victory.

22 Is that consistent with your recollection of the evening?

23 A Yeah. I don't remember specifically, but it's consistent with my recollection  
24 of the evening. I don't believe I was present for that specific conversation.

25 Again, I think there was a conversation between the President and Rudy before I



1 spoke to Rudy and I think there were other conversations with campaign staff and Rudy  
2 that I was not privy to.

3 Q Okay. Okay.

4 A It's totally consistent with my understanding of what happened after the  
5 fact.

6 Q So I think you told us that after, you know, making your way down from the  
7 residence with the group and the President beginning his remarks in the Blue Room that  
8 you went back to the Map Room and watched the President's remarks.

9 A Yes. We went to the Blue Room. They went over his remarks a little bit.  
10 We went in the Green Room to wait for him and then he give his remarks in the East  
11 Room.

12 Q Okay. Thanks for that clarification, but you made your way back to the  
13 map room where --

14 A I went back to the map room.

15 Q That was the campaign war room for the evening; is that right?

16 A Yes.

17 Q Okay. So as you referred to earlier, obviously, we do know what the  
18 President said that evening. It was, you know, there was -- he did mention that there  
19 had been a fraud on the American public, that this was an embarrassment to the country  
20 and then said that we were getting ready to win this election, frankly, we did win this  
21 election, we did win this election.

22 What was your reaction to hearing the President give those remarks on live  
23 television?

24 A I don't remember my reaction at the time to those. Again, I was in a  
25 position of counting votes, figuring out whether we won this or not and making sure we

1 had the right resources in states to deal with any issues that came up post-election, just  
2 reconfirming or confirming that we had people on the ground, talking to political  
3 operatives on the ground in places to see what the count was and the vote was.

4 I don't recall any reaction I had to his remarks.

5 Q Okay. And who else was with you in the Map Room during the time that  
6 the President was speaking?

7 A It wasn't super full, because most of the people were upstairs listening to  
8 him, but I'm pretty sure Matt Oczkowski was there. Gary Coby might have been there.  
9 Mike Hahn was probably there, because he was hanging out there most of the night.  
10 That might have been it. I don't remember anybody else.

11 Q Okay. Did you talk with any of them about the President's remarks, either  
12 while he was speaking or shortly after?

13 A I don't remember.

14 Q Okay. Do you remember any of them expressing surprise to hear the  
15 President give those remarks in light of what you had been monitoring for the election  
16 results that evening?

17 A I don't remember any reaction from anybody else either, like right after or as  
18 it was going on.

19 Q Okay. I guess I'm trying to understand. Did you -- going into the Map  
20 Room, did you know he was going to say that he had won the election?

21 A I didn't know what he was going to say that. I didn't know. He's always  
22 one to deviate from scripts.

23 Again, I wasn't paying super close attention about the actual remarks in the room.  
24 I know I weighed in with respect to what I thought the current state of affairs was at the  
25 time.

1           It didn't surprise me that he said it, because it's like on brand for him, but I don't  
2       recall any specific reaction and I don't remember whether or not that was in the remarks  
3       ahead of time or not, because, again, I wasn't paying super close attention to the  
4       wordsmithing at the time.

5           Q     Okay.   What do you mean -- you just said that one of the reasons or maybe  
6       the reason why you weren't surprised was because it was kind of on brand for the  
7       President.   What did you mean by that?

8           A     Yeah.   I mean, when giving remarks and doing things like that, he will go in  
9       directions that you don't expect, and I think he had a belief that he had won and I got that  
10      sense -- I don't know if it came from a conversation with Mr. Giuliani.   I don't know what  
11      it came from.   All I know is that it wasn't my assessment or the campaign data team's  
12      assessment.

13          So I wasn't surprised.   "Surprise" wouldn't be the right word.   It was just kind of  
14      neutral, kind of -- I just wasn't surprised.

15          Q     Okay.   And not only was it not consistent with what you and the political  
16      operations and data operations of the campaign and everyone else who was present  
17      other than Mayor Giuliani, it wasn't consistent with that, it was contrary to what you had  
18      told him about the status of the race; isn't that right?

19          A     Yes.

20          Q     Okay.   But I guess I'm just trying to understand.   You're saying that you  
21      weren't surprised notwithstanding all of the factors?

22          A     If I had a dollar for every time a client of mine didn't take my advice or listen  
23      to my strategic advice, I would be a very wealthy person.   I'm not surprised when  
24      anybody says anything usually.

25          I mean, clients go in a different direction quite often.

1 Q Sure. Understood, and certainly all of the lawyers present, I think share  
2 that experience when it comes to giving advice to your clients, but I guess this doesn't  
3 strike me as legal advice. It struck me as a statement --

4 A When I say I'd be a wealthy man, I'm talking about political advice too.  
5 Believe me. I just don't get surprised anymore when people do things contrary to what I  
6 believe to be correct information and the right advice.

7 Q So even if it wasn't -- you know, you were clear that you didn't give advice  
8 about what you should say, but, rather, were giving assessment about the fact of the  
9 state of the race; but notwithstanding that, you still weren't surprised to hear the  
10 President go out and say that he had won?

11 A That's correct.

12 [REDACTED] Okay. It may be time for a break here for a couple of minutes, but  
13 maybe --

14 [REDACTED] Actually --

15 [REDACTED] -- I'll ask my colleagues, yeah, [REDACTED] or [REDACTED], if you have all have  
16 any followup questions if you would like to ask.

17 [REDACTED] Yeah, just a quick question on that.

18 BY [REDACTED]:

19 Q Mr. Clark, it's intriguing to me. If I understood you a moment ago, you said  
20 that, you know, it sounded like at least you and some others were trying to tell the  
21 President that he lost or that the data had gone a certain way or not that he had lost, but  
22 that maybe he had not won; is that more accurate, that he had not won?

23 A I don't think even think that's accurate. I think the advice I was giving was  
24 actually pretty bullish, which is like, Hey, this thing is a jump ball right now, this is great.  
25 The public narrative leading up to it had been based on some like really tragic public

1 polling data work leading up to November and there had been a constant barrage and  
2 drumbeat that he was going to lose, he's going to lose Wisconsin by 14 points, it's going  
3 to be a blood bath and we're going to lose 15 House seats.

4 This was contrary to all of that. This was like -- my take, I think I said it before  
5 with respect to Arizona getting called too early, I tried to really calm everybody down,  
6 because it wasn't the only -- it wasn't the end all-be all in terms of race.

7 So I viewed it as kind of a positive statement, positive comment.

8 Q So a moment ago, maybe I misunderstood you, the issue that you had with  
9 the speech or when you felt like your client didn't listen was when he came out and said  
10 we did win this election, this is a major fraud in our nation, was that what was  
11 inconsistent with the -- I don't want to say advice. Is that what was inconsistent with  
12 the data and what you were telling him?

13 A Well, I wouldn't characterize my previous testimony as being surprised  
14 or -- the advice, the data, and the analysis we had given him was that this was a jump  
15 ball -- okay -- that there were issues in various places that we needed to look at and  
16 address. So leaving the fraud part of the statement aside, that he won, saying that at  
17 that time, I believe was premature; but, you know, again, in terms of political statements  
18 and political statements that people make, this is the kind of rhetoric that comes in  
19 political campaigns.

20 Again, not taking my advice or in the same way I propose calculating how it should  
21 be crafted into a speech isn't shocking to me and a lot of this stuff is the rhetoric that  
22 politicians use. So yeah. I wasn't surprised.

23 Q Is it fair to say that at that point in time when he was saying we did win this  
24 election, we did win this election, this is major fraud in our nation, nobody at that point in  
25 time was necessarily worried about the possible ramifications of that political rhetoric; is

1 that fair?

2 Mr. Garber. When you say nobody --

3

BY

4 Q Just presumably like in terms of the conversation and the reactions, I got the  
5 impression that you were saying about what's pretty natural political rhetoric -- let me  
6 start with you. Did you at that time see any concerns with the ramifications of that level  
7 of political rhetoric, saying we won the election, this is a major fraud in our nation?

8 A The only ramification I would have thought of it was that if he was incorrect  
9 about it, if it was not proven incorrect. Like it was more a political calculation, like his  
10 own reputational analysis. It didn't strike me as anything out of the ordinary course at  
11 that moment.

12 Got it. Thank you.

13 I think is right. It's actually a really natural time to take a comfort  
14 break. If we could maybe just break and come back at 12:15, would that work for you?

15 Mr. Garber. Sounds good.

16 Let's go off the record now. Thank you.

17 [Recess.]

18 So we're coming back from recess at 12:11 p.m. and there was just a  
19 quick followup question that I wanted to ask you.

20

BY

21 Q Before the break, we were briefly talking about the President's speech  
22 where he said, frankly, we did win this election, we did win this election, this is a major  
23 fraud in our nation. To your knowledge, had anybody on the staff informed the  
24 President that major fraud had been found during the course of the election?

25 A No, not to my knowledge.

1 Q So do you have any idea where he came up with that or was it your  
2 impression that he just made it up on the fly?

3 A Again, I don't remember the wordsmithing of the speech just prior to it. So  
4 I don't know if someone suggested that to him. I don't think they did. I think he  
5 probably came up with that on the fly.

6 Q But sitting here today, you're not aware of any staffer or employee who had  
7 actually told him that there had been major fraud in the election?

8 A No, I'm not aware.

9

BY [REDACTED]

10 Q And just to follow up with that, Mr. Clark, did you, yourself, believe at that  
11 time that there had been a major fraud in the election?

12 A I mean, it depends on the meaning of the word "fraud" and how you look at  
13 it. I mean, there had been issues. I think there were serious concerns about the  
14 volume of mail-in ballots. I shared them. I still do, but the switch to an all-mail voting  
15 system in a presidential election year, President election cycle is really problematic in  
16 terms of controls, in terms of concern over handling of ballots; but fraud in the traditional  
17 sense of the word, someone stealing something or hiding something with mal-intent, at  
18 that time, I didn't have -- I didn't share with anybody a belief that that was the case.

19

BY [REDACTED]

20 Q I guess like in the history of Presidents coming out the night of an election to  
21 come out and this is a fraud on the America public, this is an embarrassment to the  
22 country, this is a major fraud, was anyone concerned or do you remember hearing any  
23 conversations about the concern about the inflammatory nature of the President of the  
24 United States making statements like that the night of an election?

25 A I don't remember anything specifically. I'm not saying that nobody said

1       that to him. I just don't remember the specifics in terms of the actual like wordsmithing  
2       of the speech.

3       [REDACTED] Okay. Thank you. I'm going to turn it over to my co-counsel,  
4       [REDACTED]

5       [REDACTED] Okay. Thank you.

6

BY [REDACTED]

7               Q     Mr. Clark, just before we leave Election Day, I wanted to ask you do you  
8       remember any conversations before Election Day about the President's speech, the  
9       remarks that he would give?

10              A     Prior to Election Day?

11              Q     Yes.

12              A     I don't remember any conversations about that.

13              Q     Okay. And in the questions that [REDACTED] just asked you, you referred to a  
14       transition to an all-mail voting system. What do you mean by that?

15              A     So, obviously, 2020 was a year when COVID took over, but there were also  
16       some major changes to voting systems in the states. So in Pennsylvania, Pennsylvania  
17       traditionally did not have a high absentee ballot rate. I mean, it was low, single-digit,  
18       percentages of the votes cast were absentee. An overwhelming majority were election  
19       day because they had an excuse-based voting system.

20              In 2019, the legislature in Pennsylvania changed that system to allow for no  
21       excuse absentee voting. Combined with COVID, it led to an explosion of absentee  
22       ballots that were put into the system in Pennsylvania.

23              It wasn't a particularly well-drafted law and it really left a lot to the imagination in  
24       terms of local election officials and the courts in terms of interpreting those, and those  
25       interpretations were kind of all over the map, and as I'm sure all of you on the call know, I



1 mean, if you've ever been into a Board of Elections meeting or been into a polling place  
2 with people, you have a lot of people that have been doing this election administration  
3 for a very long time that have been doing it one way that are daily workers, not really well  
4 versed in election law and the mechanics of voting, and to make a monumental change  
5 like that in a presidential election cycle just, first of all, it seemed insane to me because  
6 it's not the right way to run a railroad, but it created a lot of concern about the handling  
7 and the counting of absentee ballots.

8 Arizona -- not Arizona. Nevada. Nevada changed their law to all mail voting  
9 system in August of 2020. August of 2020, and --

10 Q I'm sorry. I didn't mean to interrupt you, but I think that's the point I was  
11 hoping to get at. You referred earlier to an all-mail voting system, but then the example  
12 you gave for Pennsylvania was about the expansion of access to absentee ballots through  
13 no excuse balloting.

14 So are you -- I take it, then, you were not trying to say that the entire -- that all 50  
15 states went to a mail-in ballot system, which is not accurate?

16 A No. The Presidential election is 50 separate elections in 50 different states.

17 Q Right, and most of them were -- the balloting, the change was to increase  
18 the availability or the use of absentee ballots; is that right?

19 A Not necessarily. Pennsylvania was, but Pennsylvania's turn to a no excuse  
20 system coincided with the explosion of COVID, which led to an even greater explosion of  
21 mail-in balloting than I think anyone would have anticipated, absentee voting that anyone  
22 would have anticipated.

23 You know, Nevada is a great example. Nevada changed their system to an  
24 all-mail system, not just absentee system, like mailing live ballots out to people on their  
25 voting list in August of 2020. They just rammed it through, which is insane to me.

1 I mean, if you talk to election officials in Colorado, Oregon, Hawaii, that have  
2 switched to these things, it's a multi-cycle change in process, because you've got to get  
3 the security on it right and the handling of it right, because you're adding a chain of  
4 custody to a balloting procedure that had typically been done exclusively in person.

5 So the changes and the temporal component of the changes in particular were a  
6 great concern.

7 Q Okay. Thank you for that.

8 So let's move forward from Election Day to the following week as ballots  
9 continued to be counted in the state and additional states are called over the next several  
10 days. So do you remember meeting with the President in the days after the election?

11 A I do. I couldn't tell you specific days that it occurred, but I do remember  
12 meeting with him in the days after the election.

13 Q I'm happy to prompt your recollection and see if this jogs your memory. So  
14 we've received testimony about a meeting with the President in the White House on  
15 November 6th. So this would have been the day before the major media outlets called  
16 the race entirely.

17 So on November 7th, AP, CNN, NBC, CBS, and Fox News called the election for  
18 President Biden after projecting that he would win Pennsylvania. Do you remember  
19 that?

20 A Not specifically, but I don't doubt that I was there the day before then. I  
21 just don't remember the topic of conversation.

22 Q I'm sorry. Let me be a little bit more precise. Do you remember that they  
23 called the race on November 7th after --

24 A Yes.

25 Q -- projecting that he would win Pennsylvania?

1           A    Yes.

2           Q    Okay.  Do you remember meeting with the President the day before that?

3           A    Not specifically, but I'm sure I met with him the day before that.  I'm not  
4   trying to be coy.  I just really don't remember the specifics of the day I met with him to  
5   talk about "X".  The tick tock of the time period is really not the clearest in my memory.

6           Q    Sure.  Understood.

7                So I can tell you that we received testimony that the participants in this meeting  
8   that I'm referring to on November 6th include yourself, Mr. Kushner, Mr. Stepien, Mr.  
9   Miller, and then Matt Oczkowski participated by phone.  Does that jog your memory  
10   about this meeting?

11          A    Yes.

12          Q    Okay.  So what can you tell us about the contents, the discussion during  
13   this meeting?

14          A    Again, it's not all super clear, but we would have talked about the data in the  
15   race, probably specifically Georgia and Arizona given that Matt was on the call and,  
16   actually, at that time period, Pennsylvania too, because Matt was really in charge of  
17   getting his arms around how many votes were outstanding, of those outstanding votes  
18   and those specific voters whose ballots were not yet counted, modeling them to make a  
19   determination as to how their votes would come up out.

20                So we would have been giving the President, presumably, an update in terms of  
21   how probably Georgia, Pennsylvania, and Arizona were going to come out.

22          Q    And what did you tell the President, you meaning the campaign officials that  
23   participated in the meeting, about how those states were going to come out?

24          A    Honestly, I don't remember specifically on that Friday.  Everything moved  
25   really fast, obviously.  So Tuesday is the election.  It rolls into Wednesday morning.

1 We still weren't clear on Arizona. We still weren't clear on Pennsylvania. We still  
2 wouldn't been clear on Georgia.

3 I presume -- there was a meeting. I don't remember the date, but there was a  
4 meeting where Matt kind of told everybody, and I don't remember if this was with the  
5 President, that we weren't going to win Georgia. I don't remember if it was this meeting  
6 or not. I don't think it was this meeting. I think it was the week after, but that's like  
7 my Matt Oczkowski meeting memory.

8 Q Okay. That's consistent. We received testimony that during a meeting -- I  
9 thought it was this one, the 6th -- that Matt Oczkowski told President Trump that he was  
10 likely to lose, that the numbers just weren't there. Is that consistent with your  
11 recollection?

12 A Yeah, at some point. I just can't put the 6th on it, but I remember that  
13 meeting and I remember it was like a switch. Matt was like we're good in Georgia, we're  
14 good in Georgia, we're good in Georgia, and then all of a sudden, we weren't. I just  
15 remember that specifically.

16 I just don't remember that it occurred on the 6th.

17 Q Got it. Okay. And when you're saying that there was a switch with Mr.  
18 Oczkowski and his assessment of the Georgia numbers, that wasn't just during the  
19 meeting, but, rather, you mean over a period of days as they were counting in Georgia?

20 A It wasn't at that meeting, but it was at a prior meeting where, I mean, it was  
21 a matter of hours. It was like, I think we're good in Georgia, and then all of a sudden, we  
22 weren't.

23 Q Got it. Okay.

24 A But it was in the same period, the same probably --

25 Q What else --

1           A    -- but it wasn't at this meeting.

2           Q    I'm sorry. I didn't mean to speak over you. What else do you remember  
3 about what Mr. Oczkowski said during the meeting that you're recalling where he gave  
4 the President his assessment?

5           A    I don't remember a lot. He wouldn't have said anything about -- I think at  
6 that point in time, we were still pretty confident, based on our model, that Arizona was  
7 going to come out okay. We thought it was going to be super tight. I think we were  
8 like, Look, this is going to be really close, but like I think we're going to end Arizona up like  
9 5,000 to 7,500 votes based on our model numbers.

10                So he would have still been saying that at this point. Pennsylvania, he probably  
11 would have given an update on the outstanding ballots in Pennsylvania, and on that  
12 following Saturday when the networks called it, I remember Matt's numbers hadn't really  
13 caught up to where the networks were at this point. So I don't know if he had given us a  
14 definitive answer on Pennsylvania.

15                Then Georgia was such a mess in terms of ballots and their curing period, and all  
16 of that was happening. I don't remember if he said with any definition on the 6th that  
17 that was case then, but I could be wrong. It's not -- it wouldn't surprise me if that other  
18 testimony you have is correct, because that meeting took place. I just can't pinpoint it  
19 on the 6th.

20           Q    Well, setting aside the 6th of not, but the meeting that you remember, did  
21 you agree with Mr. Oczkowski's assessment at that time?

22           A    In terms of his count, yeah. I would have no reason to disagree with him,  
23 because he was doing the data analytics. I didn't look at the algorithm. I didn't look at  
24 the numbers. I wasn't in the middle of it at that point. So I would have assumed his  
25 numbers were correct.

1           Q    And did you express your assumption or your conclusion during the  
2 meeting?

3           A    I don't remember doing that, but I might have.

4           Q    Do you remember others speaking in sort of support or in agreement with  
5 what Mr. Oczkowski was saying?

6           A    Not specifically, but no one would have disagreed with him. Let me put it  
7 that way. Nobody would have -- if it was me and Miller and Stepien and Jared, no one  
8 would have come in and said, No, he's all wet, he's wrong; but I don't know how full  
9 throated it was that someone jumped in. I don't remember.

10          Q    Okay. What was President's reaction to Mr. Oczkowski's assessment?

11          A    I don't remember his reaction that day, to be honest with you. I don't  
12 recall. He was always -- he always post-election in a limited period of time when I was  
13 really interacting with him, he always took information in in a way that was pretty calm  
14 and absorbed it, but I don't remember any specific reactions.

15          Q    Okay. Did you have any question about whether he had actually heard and  
16 understood what Mr. Oczkowski was saying though?

17          A    I don't have any reason to believe he didn't hear and understand what he  
18 was saying.

19          Q    Okay. We have received testimony that all present were for the meeting  
20 except for the President appeared to be in agreement about the conclusion. Is that fair?

21          A    That's fair. Yes.

22          Q    We've also heard testimony about a meeting about a similar topic that  
23 included Mayor Guiliani. Do you recall whether he participated in the meeting that  
24 you're remembering with Mr. Oczkowski?

25          A    I don't recall if he participated in that meeting or not.

1           Q    Okay.  Around this time period, either before or just after the networks  
2           called the race, do you remember having another meeting at the White House where Mr.  
3           Guiliani participated, possibly by phone?

4           A    Yes.

5           Q    Okay.  What do you remember about that?

6           A    So there were two meetings, one where he was in person, and I don't know  
7           what when that occurred.  It was post-election and before he kind of took over.  It was  
8           a full house in the Oval Office.  He was sitting next to me and we were talking about  
9           Pennsylvania and litigation with respect to Pennsylvania.

10          I think he was talking about lawsuits and affidavits.  It was just kind of a  
11          conversation that was really going nowhere, and at one point, Matt Morgan and I  
12          excused ourselves, just because the conversation was going nowhere, and went to a  
13          different room and talked about kind of stuff we were working on and things like that.

14          Q    Okay.  What do you mean by the conversation was going nowhere?

15          A    He was just -- it was a circular conversation about Rudy and affidavits and,  
16          you know, I've got an operating theory about how I approach issues like this in anything.  
17          Right?

18          But you have to look at what do you think, what do you know, and what can you  
19          prove.  Rumors can be true or not true.  So you should kind of chase down everything.

20          I just remember that in meeting, Rudy was just chasing ghosts from things that  
21          had happened, you know, 10 days before and it just was off, just off.  I don't know how  
22          else to describe it, but it was a pointless conversation that wasn't leading to anything  
23          substantive, if that makes sense.

24          Q    Okay.  It's does, and I would like to ask you about it, but it looks like we've  
25          lost your video.

1 A Really.

2 [REDACTED] Is that on my end or, in the conference, can you see Mr. Clark at this  
3 point?

4 [REDACTED] We cannot.

5 [Pause.]

6 [REDACTED] There we go. Great. Thank you.

7

BY [REDACTED]

8 Q So, Mr. Clark, I heard you before we had our little technical difficulty there.

9 You were saying that your operating theory is sort of what you think, what do you know,  
10 and what can prove and that your interaction with Mayor Guiliani, in particular in the  
11 meeting that you're recalling in the post-election time period, that his statements were  
12 inconsistent with that; is that fair?

13 A Yes. That's fair.

14 Q What were the things that Mayor Guiliani was saying or asserting that you  
15 felt like didn't satisfy the last part of your operating theory, which is do you know it and  
16 can you prove it?

17 A I don't remember the specifics, but I just remember it was rumors that had  
18 been floating around about voting in the election and it was related to Pennsylvania and  
19 that we just didn't have any evidence for it at the time, and it was just a pointless  
20 conversation, because it wasn't leading us to anything down the road that we needed to  
21 like accomplish or were looking into.

22 So I don't remember the specifics at this point in my life, but I just remember it  
23 was completely a dead-end and it just pointless.

24 Q Understood.

25 A Look, I had had some frustrations with Mayor Guiliani, and I'm sure you'll



1 talk about it, in a subsequent meeting we had, but like it was a lot of that, and I didn't  
2 want to deal with it anymore, because we didn't have time.

3 Q Was the President during this meeting you're recalling with Mayor Guiliani?

4 A Yeah. He was.

5 Q Did you make your assessment of Mayor Guiliani's statements clear in the  
6 meeting?

7 A I'm sure -- well, I don't know how clear I was, but I'm sure I attempted to  
8 make it clear. I always tried to tell the truth to him and everybody and give honest  
9 advice.

10 So I don't know how clear it was, but I tried.

11 Q But you did state your assessment during the meeting and it was -- you were  
12 hoping to make clear what you thought about --

13 A I'm sure I did.

14 Q What, specifically, do you remember saying at that point?

15 A Oh, in terms of specifics, I just was probably saying what I said a lot, which  
16 was, All right, guys, do we have any evidence of this, do we have any affidavits, is there  
17 any -- like what do we have to show this is the case.

18 Q But did the President respond?

19 A No. I'm sure Rudy responded at that point. The President would just kind  
20 of observe these conversations, usually, more than engage in a meaningful way, with me  
21 anyway, not necessarily with others.

22 Q Okay. But is it fair to say that it could not have escaped notice during this  
23 meeting that you and Mr. Morgan had a different assessment of what Mayor Guiliani was  
24 saying?

25 A No. It wouldn't have escaped notice.

1           Q    I think you said that you remember two meetings. One was in person with  
2   Mayor Giuliani, but there was another one during this time period. What do you  
3   remember about that one?

4           A    And this was the week after the networks called the election, right  
5   before -- it must have been right before Rudy took over. I was at the White House for a  
6   meeting not related to Mr. Giuliani. It was a communications meeting, because I  
7   was -- we were waiting for the President. We were going to meet with the President.  
8   It was me, Bill Stepien, and Jason Miller. I think Erin Perrine was there, for some reason.  
9   I'm guessing it was some kind of press or communications meeting.

10           We were waiting in the cabinet room for the meeting to begin, and someone  
11   came into the cabinet room and said, Hey, the President wants to talk to you, can you  
12   come into this meeting. I said sure.

13           I grabbed my stuff, walked to the outer oval, into the Oval Office, and a big crowd  
14   was there. There was just a lot people there. Maybe it seemed bigger than it really  
15   was, but there was a lot of people there, and the President and everybody were on the  
16   phone with Rudy Giuliani and he was talking about -- they were talking about -- having a  
17   discussion about Georgia and Georgia legal challenges, and my first thought was, Well,  
18   this is odd that I wasn't invited to this meeting; and the second thought was the President  
19   let Rudy talk for a while and said, Hey, Rudy, Justin is here, what do you think of filing a  
20   lawsuit or doing something in Georgia.

21           He was doing something in Georgia and, again, everybody in the world was in that  
22   meeting, and my assessment was, Look, Georgia recount statutes are really weird.  
23   They're not -- they're all different, but theirs is particularly weird because you can't file for  
24   a recount until post-certification in Georgia. So the Governor certifies the election and  
25   then you file for a recount.

1           So it's like super late in the game.   Okay?   And but it's actually an administrative  
2   process and remedy that you can get to the bottom of some thing.   It's not like a  
3   perfunctory count.   There was currently a hand recount going on in Georgia, if you  
4   recall.

5           So, anyway, I walked through that statute and all of that and so I said I don't think  
6   we should do anything administratively or in Federal Court or anything like that because  
7   we're just going to get dismissed because our remedy is the State Court and the federal  
8   judge is just going to say, you know, look at the state statute to do that.

9           There was some back and forth about it.   There was some back and forth about  
10   the hand count going on, and Mr. Guiliani and I, we've butted heads before.   He  
11   said -- he told the President that I was lying to them about that, which I wasn't, and I just  
12   kind of lost it on Rudy and got into a shouting match with him on the phone that day,.

13           He said, You're lying.   I came back with, I'm not lying, just read the statute in  
14   Georgia.   Then we started yelling at each other and the President broke up the  
15   conversation and the meeting broke up.

16           Q    What was Mr. Guiliani's response to your telling him that what you were  
17   saying was juts the reading the statute in Georgia?

18           A    I don't remember.   We were screaming at each other.

19           Q    Okay.   How long after that interaction did Mayor Guiliani take over  
20   litigation on behalf of the campaign?

21           A    I remember it like immediately, but I don't think it was immediately.   I think  
22   it was like the next day.

23           Q    But within a period of a day or so after that interaction?

24           A    That's my recollection anyway, yeah.

25           Q    How did you learn that Mr. Guiliani would be taking over litigation for the

1 campaign?

2 A The President called me and told me.

3 Q And what did he tell you?

4 Mr. Garber. That would probably -- that would be a privileged conversation, I  
5 think.

6 Mr. Clark. Yeah. I'm not comfortable getting into that, but I was informed by  
7 him that Mr. Giuliani would be taking over the campaign or taking over the litigation on  
8 the campaign.

9

BY

10 Q Okay.

11 A Then he subsequently tweeted about it, I believe later that day or the next  
12 day.

13 Q Did he give you a reason?

14 Mr. Garber. Again, I think that's a privileged conversation. It's just that's Justin  
15 and President about legal strategy.

16

BY

17 Q Understood. I mean, even if not telling me the reason, but did you  
18 understand that there was a reason?

19 Mr. Garber. Again, I think that goes to the substance of the communication from  
20 the client to the lawyer, and that's just hardline privileged stuff.

21 I take your point.

22

BY

23 Q Mr. Clark, did you believe that the interaction that you had with Mayor  
24 Giuliani in the Oval Office with a crowd of people present, including the President himself,  
25 did you see those two things as connected, as one leading to the other?

1           A     In part, but it was kind of the culmination of a week of us disagreeing about  
2     stuff. That was kind of the, you know, capstone of it, but it was part of the puzzle, but it  
3     was probably the last -- I don't want to say last straw, but it was the last thing that  
4     happened.

5           Mr. Garber. "Us" is you and Rudy.

6           Mr. Clark. Between me and Rudy, yes.

7           BY [REDACTED]:

8           Q     You and Rudy directly, but also just in general, you and Mr. Morgan, the sort  
9     of institutional or established campaign lawyers versus Mayor Guiliani and his associates;  
10    is that fair?

11          A     Yes.

12          Q     And if you can, can you distill for us what was the substance of the  
13    disagreement between you and Mayor Guiliani?

14          A     I mean, it was -- the disagreements were like I always viewed them as  
15    opposition in nature. If I had said that it was noon, he would have said it was midnight.  
16    There was a lot of that going on. That was my hot take on it, but, substantively, you  
17    know, there's a process to challenge election results and I never got the impression that  
18    Rudy's team was interested in following that process.

19                I believe the process we had would have -- would have and could have uncovered  
20    some things with a lot more serious effort to determine -- I'll never know the answer to  
21    that because we weren't allowed to do it, but it was they believed a lot more in trial by  
22    P.R. They believed in not following the prescribed processes and didn't have a  
23    fundamental understanding, I didn't think, of election law or local election law that  
24    prevented them from going down that stratum.

25                There were also legal theories that I thought were fruitless. Dominion voting

1 machines and software changes and, you know, Venezuela, I thought it was -- regardless  
2 of the merits of it, which I didn't think were correct, the path of going down that way, I  
3 just didn't think was a good strategy, because it wasn't something that was going to  
4 fundamentally change anything.

5 So we disagreed on a lot of stuff and a lot of it just became oppositional at the  
6 end, and that was that.

7 Q Okay. Thanks for that explanation, and I think you now have told us about  
8 two in-person meetings with the President where these issues came up. You haven't  
9 told us the content, but you did tell us that you had a direct phone call with the President  
10 about this.

11 Through the course of all of those interactions and any others that you had with  
12 President, do you think that the differences between you and Mayor Guiliani were clear  
13 to the President?

14 A I don't know, but I would think so. Again, I don't know how clear I was or  
15 wasn't, but I always attempted to be.

16 Q A better way I should have asked my question, but did you state your  
17 differences with Mayor Guiliani out loud as opposed to keeping them to yourself?

18 A Yes.

19 Q Okay. Let's see. On the day -- going back to the timeline, November 7th,  
20 the day that the networks called the race, do you remember being in a meeting with the  
21 President in residence that day?

22 A Yes.

23 Q Okay. We received testimony that the meeting included Mr. Stepien, Jason  
24 Miller, David Bossie, and Eric Herschmann. Is that consistent with your recollection?

25 A Yes.

1 Q Were there any others present?

2 A Not that I remember. Mrs. Trump came in at the end of the meeting to say  
3 hello, but she wasn't like in the meeting.

4 Q Okay. We've also received testimony that the participants in the meeting,  
5 and in particular you, told the President that there was a likelihood of success in election  
6 challenges of overturning the race, the outcome of the election, was less than five  
7 percent. Is that consistent with your recollection?

8 A Sort of. I told him it was between five and ten percent, I think, and I laid  
9 out those percentages based on there still being outstanding votes to count in Arizona  
10 that, again, even at that late point, we thought there was -- we thought we were going to  
11 win by 5,000 to 7500 votes. The election challenge in Wisconsin was real and was being  
12 litigated in terms of the recount in Dane and Madison -- in Dane and Milwaukee County,  
13 and Georgia was still a mess at that point.

14 So at that point, those three states, if they had flipped to President Trump, it  
15 would have been a 269-269 vote and we would have had a contingent vote in the  
16 House. Not a contingent vote. I forget what they call it, but a vote in the House of  
17 Representatives for it.

18 I did tell him there was a five to ten percent chance of winning and every one of  
19 those things had to go right. Like it had to be a straight flush -- right -- all three. He  
20 said he understood.

21 Q Okay. Did anyone in that meeting on the 7th assert a different view of the  
22 likelihood of success?

23 A No. In fact, beforehand, we all went over and beforehand had met and  
24 discussed like what are we going to say to him, because we had been assigned the task of  
25 going over there and speaking to him, and it came to down to, yeah, everyone agreed

1 with that assessment, and it was agreed that I would be the one to tell him that, because I  
2 was the only one that a real depth of knowledge in both the vote count and the legal  
3 challenge in -- the challenges, the one in Wisconsin and Georgia.

4 Q Okay. And what was the President's reaction when you told him that?

5 A I think he said, Okay, I think it's a little bit higher, but okay, I understand.

6 Q Okay. You said that you assigned a task, the group, of going over there.  
7 Who assigned that task to you?

8 A No. I think we just kind of all agreed that that was the right approach. I  
9 don't think it was like, Justin, you get to -- you know, we didn't draw straws or anything.  
10 I was happy to do it. It was fine.

11 Q Got it. What about meeting itself; who set up the meet or asked for it to  
12 occur?

13 A Oh, I see what you're saying.

14 So earlier in day, we had had a meeting in the conference room at the campaign.  
15 It was all those participants you just mentioned plus Jared Kushner was there. Matt  
16 Morgan was there. Hope Hicks was there. Dan Scavino was there.

17 And when the networks called it, that meeting was occurring and the President  
18 was golfing out in Loudoun County and it was decided at that moment, Hey, someone has  
19 got to go back and talk to him and be there when he gets back to have a conversation  
20 with him about the networks callings. It was a pretty monumental event.

21 So we kind of just picked who needed to go and who needed to be there. So  
22 that's why we did that.

23 Q I see. Okay. Thank you.

24 Was there any discussion either at this meeting at headquarters before or in the  
25 meeting in the residence with the President about concession?



1           A    I don't remember that. I don't remember that. There certainly wasn't  
2 with the President. I don't think we talked about concession at that point with him.

3           I'm not sure I ever spoke about it with him. I'm not sure. I don't think so, but I  
4 don't remember, but I don't think -- in that meeting at the campaign, it may have come  
5 up, but it certainly wasn't an in-depth discussion.

6           Again, I believed in that five to ten percent path and so I wasn't thinking  
7 concession at that point. That wasn't my job. Like a concession speech or whether  
8 you should concede is something that's like super personal and it's something that like  
9 family would discuss with him, and any speech he would give with respect to that would  
10 have been, you know, the Millers, Jason and Stephen coming together on that.

11          I was really about legal challenges and the numbers at that point. So I didn't  
12 have it in my head. That doesn't mean it wasn't discussed, but I don't think it was  
13 discussed with him in that meeting in that conference room. It may have been, but I  
14 don't remember.

15          [REDACTED] Okay. Let me look at my notes here real quick.

16          [REDACTED] peruses notes.]

17          BY [REDACTED]:

18          Q    During this meeting when you're in the residence with the President, were  
19 there any states at that point that you told him there was no likelihood of changing the  
20 outcome through the litigation?

21          A    I don't remember that, the path. We may have discussed a potential  
22 recount in Pennsylvania, which had just gotten called, but at that point, it looked as if the  
23 margin was just going to be too big for a recount.

24          The rule of thumb that I go by is for every million votes cast, for every million  
25 votes cast, if it's within a thousand votes, a recount can overturn the results of an election

1 for sure. If it's above that, the odds just start to plummet. It's just really hard to after  
2 the fact change outcomes.

3 So based on my rule of thumb, I don't remember the count at that point in time,  
4 but I think stuck to those three states because I think Pennsylvania was just going to be  
5 too hard to have a recount effectuate any kind of change in the outcome of the election  
6 in that state.

7 Q Understood. Did you ever share that rule of thumb with the President?

8 A I don't know if I shared it with him, but I certainly would have shared it with  
9 other people on the campaign.

10 [REDACTED] Okay. Before -- I think I'm going to switch gears a little bit. So I'll  
11 pause here and see if my colleagues have any followup before I do.

12 [REDACTED] No. We're good. Go ahead.

13 [REDACTED] Great.

14 Let's pull up a document really quickly. It's about one of those states and the  
15 post-election strategy. So this is going to be Exhibit No. 26. With your patience, Mr.  
16 Clark, we'll do this for the first time. We'll pull the document up on the screen through  
17 a screen share, and please let us know if you need us scroll or focus in.

18 Mr. Clark. Sure.

19 BY [REDACTED]

20 Q So this is Exhibit 26. You can see the document on your screen?

21 A I can, yes.

22 [REDACTED] Great. If you don't mind continue scrolling down to the bottom so  
23 that Mr. Clark can see where the email chain begins.

24 There we go. If we could just focus on that proposed press conference  
25 announcement.

1 BY [REDACTED]

2 Q Do you remember this circumstance, Mr. Clark?

3 It looks like an email chain beginning November 8, 2020, discussing a potential  
4 press conference in Nevada?

5 A I don't remember this specifically, but I don't doubt that it was sent.

6 Q Do you remember, generally, what was your outlook or your strategy with  
7 respect to the outcome of the election in Nevada?

8 A As I said before, Nevada, the change in their rules was really something. I  
9 didn't -- it was ill advised, real problems with election administration in Nevada, just on its  
10 face, like per se election administration problems because of the recency in the change of  
11 the voting method.

12 We did pursue an election challenge in Nevada, if I'm recalling it right, and -- yeah.  
13 Adam and Matt Schlapp were kind of leading the effort out there.

14 Again, I wasn't never super bullish on it, because the count had come in, but it was  
15 a real challenge to get a look at the ballots in Nevada.

16 Q Okay. And if we could scroll up to the top, there's an email exchange  
17 between Stephen Miller or -- sorry -- Jason Miller and Mr. Stepien. Let's see. There we  
18 go.

19 So this is Mr. Stepien asks -- sort of adds Mr. Miller into the email chain and asks  
20 for his legal strategy. Mr. Miller responds at 3:50 p.m. on the 8th: "My understanding  
21 of our Nevada strategy is to cause as much chaos as possible."

22 Mr. Stepien then responds: "If that's the Nevada play, then okay, but as for  
23 Pennsylvania, etc., no more Four Seasoning."

24 So the first thing I want to ask you about is just about the Nevada strategy. What  
25 did you understand Mr. Miller to mean by "cause as much chaos as possible"?

1           A    I don't remember this email.   So I'm not sure what he meant by that.

2           Q    Looking at it now, what do you think that it meant?

3           A    I think he's talk about a comms strategy there in terms of chaos, but I don't  
4 recall specifically what he was getting at there.

5           Q    Okay.   What, generally speaking just from your experience in campaigns,  
6 what would a comms strategy aimed at creating chaos, what would that mean?

7           Mr. Garber.   If you know.   This sounds like the conjecture.

8           Mr. Clark.   Yeah.   I mean, the playbook from a regular campaign to this period  
9 of time in this campaign would have been thrown out the window.   So I'm not sure.

10

BY

11           Q    Okay.   Were you aware of any strategies of the Trump Reelection  
12 Campaign during this time period aimed at creating chaos?

13           A    I don't remember.

14           Q    What do you understand Mr. Stepien's response to refer to, sort of  
15 contrasting --

16           Mr. Garber.   Can we take -- I'm sorry.   Can we take a minute to just look at the  
17 whole exchange.

18           [REDACTED]   Sure.   Of course.

19           Mr. Garber.   I think you control it.   If you could start at the bottom and then  
20 scroll up.

21           [REDACTED]   Yes.   So there's this portion that; s the sort of draft press  
22 conference announcement, and then --

23           Mr. Clark.   Hold right there.

24           [Witness peruses document.]

25           Mr. Clark.   Okay.   Go up.

1 [Witness further peruses document.]

2 Mr. Clark. All right. Stop right there for a second.

3 [Witness further peruses document.]

4 Mr. Clark. Go up.

5 [Witness further peruses document.]

6 Mr. Clark. So I don't even know if I was on the original email with Jason about  
7 chaos piece, but in terms of the "no more Four Seasoning", there had been a press  
8 conference. I'm actually pretty sure it happened on the day the networks called the  
9 where Mr. Guiliani had done a press conference and it was at like the Four Seasons  
10 Landscaping Company in Pennsylvania, and it was just like super embarrassing. So I'm  
11 assuming that's what Mr. Stepien is referencing.

12 BY [REDACTED]:

13 Q Okay. What was -- beyond your characterizing the press conference as  
14 embarrassing, did you form any conclusions about the content about the statements that  
15 Mr. Guiliani and others made during that press conference?

16 A The only thing I remember about that press conference, his statements in  
17 the press conference, was where he was kind of mocking that the network called it. I  
18 don't remember a lot of content of what he was talking about.

19 Q Did you discuss that afterwards with senior campaign officials?

20 A No. I mean, that was -- don't forget that occurred -- like I think it was  
21 contemporaneously with the networks calling it. So I had much bigger fish to fry at that  
22 point.

23 Q Understood, and then I think this is around the same time as this meeting  
24 with Mayor Guiliani and the President that you previously told us about.

25 Did your assessment of -- did you repeat your assessment press conference at all

1 during your interactions with Mayor Giuliani and the President?

2 A I don't know if I did. I'm not sure.

3 [REDACTED] Okay. Let's look at one other document. This will be Exhibit 27,  
4 please.

5 Mr. Garber. The same thing with this, if we could --

6 [REDACTED] Yeah. We'll start with -- it's only two emails in this one. So  
7 there's a first email from Jason Miller on November 8th forwarding a link to article on the  
8 Gateway Pundit.

9 Mr. Clark. Can you stop right there?

10 [Witness peruses exhibit.]

11 Mr. Clark. Okay.

12 BY [REDACTED]

13 Q Do you remember this email?

14 A I don't remember it.

15 Q Okay. Looking at it now, you respond on, it looks like, very early in the  
16 morning on the 9th. You respond to the email about the Gateway Pundit article,  
17 characterizing it as a very misleading headline and making a point about NCOA flags and  
18 regarding 132,000 NCOA flags.

19 Does that jog your memory about what the content of this discussion is about?

20 Mr. Garber. Can you scroll down further just so he can see the precipitating  
21 email chain, please.

22 [REDACTED] It's just that with the link.

23 Mr. Garber. Oh, I see. Okay. Thank you.

24 Mr. Clark. It doesn't jog my memory. There was just a lot of stuff flying around  
25 then, but there were a lot of headlines and information that was coming out that just

1 didn't tell the story.

2 So I have no doubt that this is true.

3

BY [REDACTED]

4 Q Okay. So it tells the story --

5 A I have no idea if it was true.

6 Q I'm sorry. I couldn't hear you.

7 A I have no idea. My assessment there was true to the best of my ability to  
8 understand it at the time.

9 Q This seems that the article had a headline about ballots being ineligible and  
10 you're pointing out, in fact, it just means that there is some entry on the national change  
11 of address database related to those voters; is that accurate?

12 A That appears to be correct.

13 Q Based on your experience in election law, this is something that you would  
14 known the headline to be misleading?

15 A Well, no. It might have been that. I also reference in that email that this  
16 is the same thing that Alex Cannon is working on and it may have been something that  
17 got flagged for him prior to. We had discussed it, for all I know. I don't know what the  
18 contents of the article were, but, again, I'm assuming that my assessment at the time was  
19 the understanding that I had at the time and it was accurate to the best of my knowledge  
20 and belief.

21 Q That's great. So what is it that you remember Alex Cannon working on  
22 relating to allegations of voter fraud?

23 A Very soon after the election, there were a lot of -- again, there was a lot of  
24 rumors going around, and you really have to investigate it, because sometimes rumor  
25 turns into something that's not just rumor.

1           So Dave -- Alex was tasked with engaging with like data analytics people to check  
2       out stuff like this, so rumor that dead voters voted or rumors that more ballots were  
3       received than were sent in mail balloting, national change of address flags. He was  
4       tasked with working with data analytics to figure out if those things were true, which was  
5       a blessing to us because it allowed us to operate with kind of our hands free so we could  
6       have somebody else give an opinion about this stuff without having to dig into it  
7       ourselves and go down holes that sometimes were fruitful and sometimes were fruitless.

8           Q     And during what time period was Mr. Cannon doing this investigation vetting  
9       work?

10          A     I mean, It was like -- I want to say it was like Wednesday or Thursday after  
11       the election is when he started engaging on this. I don't know when he stopped. I  
12       don't remember that, because I think he stopped after I was pushed aside.

13          Q     Okay. And during that time period, was Mr. Cannon giving you his sort of  
14       readout or reporting what, if anything, the results of his investigation were?

15          A     I mean, to the extent he had them, but, again, I don't remember any  
16       specifics he told me and I'm not sure they were able to draw any conclusions prior to me  
17       being, you know, pushed aside in the middle of November. I'm not sure where that  
18       stood then.

19          Q     Okay. Meaning he wasn't able to draw any conclusions either way?

20          A     I don't remember. The bigger story is I don't remember. I don't  
21       remember any specific conversations with him about results of stuff. I knew what he  
22       was working on. I knew we would feed him headlines like this that would come in, like,  
23       Hey, look into this.

24                I don't remember any specific conclusions he true, and when team Rudy came in, I  
25       was not getting -- not asking for it and not getting a ton of feedback from Alex on this



1 project he was working on.

2 Q Okay. I guess I just wanted to clarify whether you're saying that you didn't  
3 receive any conclusions from Mr. Cannon or any assessment about his work or whether  
4 the conclusions were that he had not found anything that was able to substantiate.

5 A I don't remember any conclusions from him about his work on specific  
6 projects, but it doesn't mean he didn't come to any conclusion with respect to this. I'm  
7 certain he did.

8 [REDACTED] Okay. Let's look at one other email that's somewhat relevant to  
9 this, Exhibit 30, please.

10 [REDACTED] So if you could scroll down just a little bit, this is just a two-email  
11 exchange. I'll let you look at both of them.

12 The first email is a November 16th email from Alex Cannon to -- the contact will  
13 show Jenna Ellis. Let me know once you's had a chance to read this one.

14 Mr. Garber. So there's no indication Justin is on this one here.

15 [REDACTED] There will be up above, I believe.

16 Mr. Garber. Okay.

17 [Witness peruses exhibit.]

18 Mr. Clark. Okay.

19 BY [REDACTED]:

20 Q So Ms. Ellis responds on the 16th and it shows the full distribution list that  
21 includes you, Mr. Clark, as well as Mr. Morgan, Mr. Miller, Jason Miller, and Mr. Stepien.

22 A Okay. I don't remember this email, but I have no doubt that Alex was  
23 correct in his assessment, because he's a pretty thorough guy and he would have been  
24 diligent and looking at whatever answers were coming up.

25 Q I believe you mentioned earlier in the context of your communications with

1 Mayor Giuliani that your understanding of the issue or the rumors, the assertions related  
2 to Dominion, but specific to this time period, do you remember having any conversations  
3 with Mr. Cannon about it?

4 A Alex is a friend and I interacted with him a lot on the campaign. I don't  
5 remember any specific conversations, but I'm sure we talked about it.

6 In terms of the data side of it and analytics with vote switching or whatever  
7 election like data manipulation component, he would have been tracking that, and if he  
8 told me that there was no evidence of it on that front, I would take his word for it,  
9 because he's a thorough guy.

10 Yeah. I don't doubt -- this is also after I had kind of gotten pushed off and my  
11 oldest daughters' birthday. I have twins. So there's a better than zero percent chance  
12 that I did not really pay close attention to this email.

13 Q Understood. Well, separate from this exchange on the 16th, but just  
14 stepping back, did you ever come to understand whether Mr. Cannon's work had ever  
15 substantiated any of the allegations related to Dominion voting systems?

16 A I didn't -- I was never -- I did not come to -- I don't have -- he never  
17 communicated to me and I'm not in the position of any evidence that he was  
18 corroborating the Dominion voting stuff.

19 Q Have you ever seen any evidence that did corroborate the Dominion voting  
20 allegation?

21 A No.

22 Q So we received testimony that Mr. Cannon generally spoke with yourself,  
23 with Mr. Morgan, with Mr. Oczkowski and shared that these allegation that were coming  
24 were either difficult or impossible to verify, that the vast majority of them were not  
25 reliable at all, and we've also received testimony that you received that assessment and

1       were not surprised by it.

2               Does that all seem consistent with your recollection?

3               A     That's fair. I don't remember it specifically in specific conversations, which  
4       is what I was getting at, but generally, yes. I remember that part for sure.

5               Q     Okay. Did you share those -- well, let me rephrase.

6               Who else within the -- like on the email that we were just looking, Mr.

7       Herschmann was someone who was added into that chain and, apparently, had an  
8       interaction with Ms. Ellis about this around this time period.

9               Did you share your understanding of these allegations with Mr. Herschmann?

10              A     I want to -- the answer is probably, but he would have gotten them  
11       independently through Alex anyway. Alex and Eric and Matt and I spoke often. So if I  
12       heard something from Alex with respect to this, I could have very well heard it on a phone  
13       call with Eric on it.

14              So I'm not sure if I specifically shared those things or not, but we all kind of knew  
15       what each other was doing in that brief period of time before I got pushed aside by Team  
16       Rudy.

17              Q     During this time period, I guess what I'm getting at is did you have  
18       conversations specifically about whether any of the allegations that were coming in were  
19       verifiable with Mr. Herschmann?

20              A     I'm sure I did, but I don't remember any specific conversations.

21              Q     Going back to our conversation earlier about Mr. Meadows, what about Mr.  
22       Meadows; did you have any conversations with him about whether the election fraud  
23       allegations were verifiable?

24              A     I don't remember. I don't remember if I did or not.

25              Q     Okay. What about the President; did you speak with the President about

1       whether the election fraud allegations that were coming in were verifiable?

2               A     I don't remember having a conversation with him about that.   Again, I  
3       didn't speak to him as regularly as I did prior to the 12th, 13th, 14th, 15th, and I'm not  
4       sure what conclusions had been drawn by that time for me to be able to communicate  
5       that.

6               So I don't remember, but it doesn't mean I didn't, and if I was asked at some point  
7       about them, I certainly would have told him my impression.

8               Q     Okay.   After the time when Mr. Giuliani took over sort of leading the  
9       litigation efforts, what was your understanding of the process for vetting or investigating  
10      election fraud allegations?

11              A     I don't know what it was.   I don't really remember if there was a process for  
12      vetting and doing those types of things.   I didn't interact with him on that specific stuff  
13      at that point.

14              Q     Okay.   But you did say stay affiliated with the campaign through January  
15      2021?

16              A     Yeah, or later, whenever my pay switched over to the PAC, but yes.   I did.  
17      I was the deputy campaign manager and what I did at that point was really help the  
18      campaign CFO, Sean Dollman, and my primary goal, job was helping him in terms of  
19      reconciling the budget, doing various wind-down stuff, you know, even like moved some  
20      stuff out of the office for him because the lease was up, and then I did -- so I was really  
21      focused on budgetary stuff and wind-down.

22              There's a lot of trailing litigation.   There's a lot of trailing bills, which I would have  
23      either been able to verify or do or not.

24              You know, you do a lot of rallies and you've got a lot of vendors that are like giant  
25      vendors.   So there's people who do staging in Johnstown, Pennsylvania.   You know,

1 they're not billing on a regular basis. So you've got to reconcile all of that stuff, and then  
2 to the extent I was involved in any legal work, it was really with Matt kind of reviewing  
3 and negotiating with the money, just on the money side for the most part -- for the most  
4 part -- retainer or engagement letters for new attorneys that were coming on board with  
5 Mr. Guiliani's team.

6 Q Okay. Throughout this time period up to January 6, 2021 when you  
7 remained deputy campaign manager, did you come to form an opinion or assessment of  
8 whether the election fraud allegations that were being asserted by Mayor Guiliani's team  
9 were supported by fact?

10 A You'd have to go through individual claims that they had, because I actually  
11 think there's some serious concerns that never got addressed and I think their approach  
12 was part of the problem that they never got addressed, but like take Dominion. I think  
13 I've testified here today that they were all wet in their concerns about Dominion voting  
14 machines. They just weren't right.

15 I don't remember the other specifics they had, but that's a big one.

16 [REDACTED] Okay. Let's look at one other document, Exhibit 32, please.

17 BY [REDACTED]

18 Q So if we could just scroll down, just so you can see the beginning part. It  
19 looks like an email that originates with -- go up a little bit. Right there.

20 It originates Stephen Miller, November 22nd, asking for some on the campaign to  
21 send to speech-writing team top 20 examples of voter fraud. You respond adding in  
22 Matt Morgan and referring to earlier having provided something to Vince and Ross, and  
23 then Mr. Morgan responds to the group, providing an attachment that is titled "Best  
24 Affidavits in Federal Litigation in Michigan and Pennsylvania".

25 In the substance of this email, as you can see here, he refers to something that he

1 did on November 13th, but says by that time, Rudy's team control of the evidence  
2 process and then, essentially, says that anything after that point would need to go to  
3 Rudy's team for questions. Is that fair?

4 Mr. Garber. Have you had a chance to read the whole thing?

5 Mr. Clark. Yeah. I've read it. That seems right. I don't remember this email,  
6 but that's consistent with my memory.

7 BY [REDACTED]:

8 Q Okay. My questions here are more so the President made several speeches  
9 at the end of November and into December that discussed election fraud allegations. In  
10 particular, there was one I'm thinking of that was posted -- a video address posted around  
11 December 2nd.

12 Do you have any understanding of the fact checking or the fact checking process  
13 that went into preparing those speeches?

14 A Those specific speeches, I don't remember being involved in that.

15 Q Just generally speaking, the President's remark about election fraud after the  
16 election through January 6th, do you have an understanding of the fact checking process  
17 that went into those?

18 A Well, I mean, this jogs my memory a little bit. Vince and Ross and/or  
19 Steven Miller would email or call for examples of provable things or issues that popped  
20 up; but, again, as Matt's email points out, you know, after the November 11th, 12th,  
21 13th, we didn't have any additional information to add or the ability to vet or fact check  
22 anything that was going into his speeches.

23 Q Did you come to understand whether Mayor Guiliani's team, Ms. Ellis or  
24 anyone else, did provide fact checking or vetting for those speeches?

25 A I don't know if they did or not.

1 Q Okay.

2 A I don't remember if someone told me that.

3 Q About the election and about whether there had been any -- whether there  
4 was election fraud in connection with -- specifically, he said that the Justice Department  
5 had uncovered no evidence of wide spread voter fraud that could change the outcome of  
6 the 2020 election. Is that consistent with your memory?

7 A I remember him saying that, yes.

8 Q Okay. What was your reaction when he made that statement?

9 A I remember thinking the President is going to be really mad and, you know, I  
10 actually didn't think it was the most responsible statement to make in the world, but I  
11 didn't have any point of reference at that point. I had been not doing -- really involved  
12 in any kind of investigation or work to find this stuff by that point for a couple of weeks  
13 and, you know, I assume what he said was an accurate representation of what was going  
14 on at the Department of Justice. I had reason to believe it wasn't.

15 I didn't think he needed to say it in a press event, but yeah.

16 Q You said that your reaction was that the President would be really mad.  
17 Why was that? Why did you think he would be mad?

18 A Just knowing him and like someone -- I had assumed that he had gotten  
19 ahead of the President on that statement, meaning that he was pronouncing something  
20 on behalf of the Federal Government that the President didn't want him to say. So I was  
21 making an assumption there in terms of anger level of it, but that's just kind of how I  
22 thought he would react.

23 Q Okay. Were you aware of any evidence or anything that would contradict  
24 the conclusion that Mr. Barr stated?

25 A No.

1 Q Okay. Were you aware of the President having any information that would  
2 contradict the conclusion that Mr. Barr stated?

3 A I wasn't aware of anything at the time. Again, I had been out of this all for  
4 like two weeks. So I don't know what he was being told at the time by Mr. Giuliani,  
5 Ms. Ellis, anybody like that. So I don't know what he had.

6 [REDACTED] Okay. I'll pause here and see if any of colleagues have any followup  
7 questions.

8 [REDACTED] No. Thank you.

9 [REDACTED] So let's look at another document, Exhibit 43, please.

10 BY [REDACTED]:

11 Q While it's coming up on the screen, Mr. Clark, this is a quick one to read, not  
12 a lot of content.

13 It begins on December 20th, an email from Mr. Stephen Miller. The subject line,  
14 which you can't see on the screen right now, but it refers to Senator Tuberville in the  
15 subject and then he asked for a compendium on election fraud for the upcoming  
16 congressional certification.

17 So this is December 20th. Do you know whether that reference to the upcoming  
18 congressional certification would have been to the January 6th joint session?

19 A I assume so, but I don't remember this email exchange.

20 Q If we could scroll up a little bit, please, Mr. Miller responds, you know, with  
21 an attachment. We can see now that you're copied as well as Mr. Morgan.

22 Then up one more to see the top email on the thread, that's non-substantive. So  
23 that's more in connection with producing the document.

24 So this is something that Mr. Miller attaches. The document that was attached  
25 to this email, I think should hopefully be the next page. We can look at the first page,



1 please, Camisha.

2 It's a document called "Fraud Examples" and then it lists the six states and,  
3 perhaps, if we could zoom out a little bit just so that Mr. Clark could see the front page.  
4 It's the one that starts Arizona. If you could zoom out so that he could see the format,  
5 that would be great.

6 Do you recognize this document, Mr. Clark?

7 Mr. Garber. Do you need to see more of it?

8 Mr. Clark. Yeah. Here's my issue, is that there's so many of these documents  
9 that were floating around during the election in terms of state lists. Like this looks like a  
10 familiar document, but I don't remember this one specifically.

11 Do you have a specific question about it that I can --

12



13 Q I don't. My questions are just general. So there's no need to study it in  
14 detail.

15 Generally speaking, does this document look like something that was prepared by  
16 your team earlier in the process or would it have been something prepared by Mayor  
17 Giuliani's team?

18 A I couldn't say, but there are names on here that I don't recognize, like Olivia  
19 Jane Winters under the Pennsylvania section.

20 Q Okay.

21 A So it's hard to say. I don't think so, but I don't know for sure.

22 Q Do you have any understanding of why Mr. Miller would have been  
23 providing this information to Senator Tuberville related to the January 6th joint session?

24 A No.

25 Q Did you have any communication with members of Congress or Senators

1 regarding election fraud allegations in connection with the January 6th joint session?

2 A You know, I don't remember. It doesn't mean that I didn't, and I say that  
3 because people would talk to me. Like I've spoken to Senator Lee before and Senator  
4 Langford, generally about election fraud in the election, but I don't remember if there  
5 was anything January 6th related or if it was just kind of a generalized briefing, but I didn't  
6 really engage with those guys ahead of January 6th on a basis with respect to that vote.

7 Q Okay. So do you remember when you spoke to Senator Lee about election  
8 fraud issues?

9 A Well, see, that's what I don't remember. So I don't want be too specific,  
10 but I don't remember when I spoke to him about it.

11 Q Do you think it was before the election or after?

12 A I think it was after, but I don't remember.

13 Q Okay.

14 A And I don't remember if I spoke to Senator Langford or not or if someone  
15 told me Senator Langford was looking for information and I referred them to somebody.  
16 I just don't remember that. Those two names kind of pop out in my head, and there  
17 could have been other members of the House that I spoke to. I don't remember  
18 specifically.

19 Q The conversation that you had with Senator Lee, do you remember whether  
20 the -- I think you said that you did remember it had something to do with election fraud  
21 allegations; is that right?

22 A Yeah. I don't want to speculate, but I think I did. I just can't remember if  
23 it was a generalized briefing right after the election or if it was after that, but I don't recall  
24 the specifics of the conversation.

25 I wouldn't have been the only one on the call, because I don't know him that well.

1       So I'm not sure, but that memory is in my head.

2               Q     Okay.   That's helpful.   Who else would have been on the call, if you  
3       remember, with Senator Lee?

4               A     I think Eric Herschmann knows him really well.   So I think he might have  
5       been, but, again, I don't think it was anything -- I just don't remember enough about it.

6               Q     Okay.   Just generally speaking or maybe if it does jog your memory  
7       regarding this call with Senator Lee, what was your understanding of the purpose of the  
8       members of Congress or Senators discussing election fraud allegations with respect to  
9       January 6th?

10              A     My only understanding of it and, again, I wasn't really whipping votes.   I  
11       wasn't lobbying.   I think the members of the House and Senate were trying to get an  
12       understanding of what actually happened during the election beyond the news headlines.  
13       That was my only impression at the time.

14              Q     And was it in connection with the potential objections to the certification?

15              A     I suppose.   I can't imagine it would have been related to anything else,  
16       because it was the only benchmark thing they had to with respect to the election.   So I  
17       assume it was.

18              Q     Okay.

19              A     But yeah.   I just don't remember the specifics of it.

20              Q     Do you remember at all, your conversation with Senator Lee in specific, what  
21       sort of assessment you would have given him about the strength of the evidence for  
22       election fraud allegations?

23              A     I would have just told him the truth as I understood it at the time, that there  
24       were concerns that I had with respect to the administration of the election and the  
25       handling of ballots in certain areas.   I would have just told the truth, including like if

1 specific allegations came up that were alleged by Rudy's team. I probably would have  
2 just referred him to Rudy's team, because I had no basis to say something was true or not  
3 true.

4 If I was asked about Dominion, I'm sure I would have told the truth and said I don't  
5 think that was real. Other than that, I don't know the specifics of what I would have  
6 said.

7 Q Okay. We've talked to a lot of people through the course of the  
8 investigation about these issues, and I think a lot of people have explained to us a  
9 difference between there being concerns about irregularities, some of the topics related  
10 to changes of procedure regarding absentee ballots that you've raised earlier or even the  
11 potential for an issue like the access to observers, creating the potential for some sort of  
12 problem occurring contrasted with actual allegations of election fraud that would have  
13 affected the outcome of the election.

14 Is that a fair kind of way to distinguish between the various issues, in your  
15 opinion?

16 A Not quite, because those irregularities could lead to a change in the outcome  
17 of the election.

18 Q Could lead to, but as opposed to evidence --

19 A But evidence of fraud could also not lead to. You know, if someone illegally  
20 cast 10 ballots, but the margin in the election was 20, that fraud wouldn't lead to  
21 changing the outcome of the election. That's just the -- changing the outcome of the  
22 election is just a math problem. The means by which it can happen, whether it's fraud  
23 or irregularity or mishandling of a ballot or flawed election administration, that kind of  
24 doesn't matter. That's just how it happened.

25 So I don't take that characterization totally, but I get where people are coming

1 from. There's a distinction with to out and out fraud. I don't have the knowledge to  
2 know whether there was or not. I have not seen evidence of out and out fraud in the  
3 election.

4 Were there a lot of irregularities? Were there a lot of problems with changing  
5 voting methods and technology and everything ahead of the election combined with  
6 COVID? You bet. Were there signature matching issues, I think, in states? Yes there  
7 were; but, again, my job at that point in time -- the President chose a different path in  
8 terms of who to go with. So that wasn't my job anymore. So I didn't chase those  
9 down.

10 Q What wasn't your job anymore? Understanding whether there was any  
11 evidence to support allegations of fraud?

12 A Allegations of things that would happened that would have overturned the  
13 result of the election.

14 Q Understood. Okay. So going back to your conversation with Senator Lee,  
15 is that a distinction that you would have shared with him?

16 A I would have talked -- I would have shared my observations about the  
17 election and I would have said those things to anybody that asked.

18 Q Okay.

19 A I just don't have the knowledge from November 15th or whatever on to be  
20 able to do that.

21 Q Okay. That's because you would have referred them to Mayor Giuliani and  
22 his team after that point; is that fair?

23 A Yes. That's fair.

24 Q Did you ever --

25 Mr. Garber. I don't get the sense we're planning on wrapping up and my

1 computer is about to run out of juice. I'm wondering if, at some point soon, it's a good  
2 time to take a break.

3 [REDACTED] Yeah. I have one followup question I would like to pose. Then I  
4 think this is a natural time for a break. We had actually had talked about maybe taking  
5 like a short lunch break, a 30-minute or so break at 1:30.

6 Mr. Garber. Great.

7 BY [REDACTED]:

8 Q Before we do and, hopefully, not trying the battery of your computer too  
9 much, but, Mr. Clark, you've told us that you would shared your assessment of these  
10 issues with anyone who asked you and you've given us some examples of some of the  
11 people that you did talk to about this. Did any of those people ever come back to you  
12 after having been referred to Mayor Guiliani and his team and express to you that they  
13 did learn that there was evidence that would support allegations of election fraud?

14 A It was a little bit of a hypothetical, because I don't know the universe of  
15 people that would come back to me, but yeah. I never got feedback that they had  
16 different proof.

17 Q Okay. So even after the time period that Mayor Guiliani and his team  
18 would have taken over and in the context of you referring people to them for questions  
19 about what the evidence showed regarding election fraud, you never came to learn or  
20 understand that Mayor Guiliani had produced evidence of election fraud; is that fair?

21 A That's fair.

22 [REDACTED] Okay. I think unless my colleagues in the conference room have  
23 any other followup questions before we take our break --


24 [REDACTED] No, we don't, and that's actually perfect timing.

25 So what we had hoped was to take a brief recess and come back on the record at

1       2 p.m. Does that work for you guys?

2               Mr. Clark. That's great.

3               Mr. Garber. Yes.

4                Wonderful. All right. So you can turn off sound and video or you  
5 can leave and come back. It's totally up to you and we'll all come back on the record at

6       2 p.m.

7               Until then, we'll stand in recess. Thank you.

8               [Whereupon, at 1:29 p.m., a lunch recess was taken, to reconvene at 2:00 p.m.

9       this same day.]

1

2

[REDACTED] We're back from recess at 2:06 p.m.

3

[REDACTED] can continue with the questioning.

4

[REDACTED] Great. Thank you.

5

BY [REDACTED]

6

Q So, Mr. Clark, before our break here, we talked a fair bit about litigation

7

strategy and litigation efforts in the post-election time period, both during the time when

8

you were leading that effort and then after when Mr. Giuliani took over.

9

I want to switch gears a little bit to talk about a different avenue of post-election

10

activity for the campaign and for President Trump, and that's related specifically to state

11

legislature. So we've developed evidence. We've received testimony that the

12

campaign was pursuing either challenging the outcome of the election through two

13

tracks, one being litigation, cases filed in court, and another one being directed at state

14

legislature.

15

Is that consistent with your understanding of the campaign's effort in the

16

post-election time period?

17

A It is. I would just delineate between when we talk about the campaign,

18

there was really a different approach when Rudy and those guys came in versus the

19

previous one, but yes. That's my understanding.

20

Q Understood. Let's talk about that briefly. So before the time period

21

where Mayor Giuliani took over, so before November 14-15, what was your

22

understanding of the state legislature track or path?

23

A I don't remember conversations about the state legislature path prior to Mr.

24

Giuliani taking over. I'm not sure I was privy to any discussions about it.

25

We had done a lot of work earlier in the election with respect to nominating the



1 Trump electors in those states and paid particular attention to it and I'm sure there are  
2 memos and emails about it, because there was the faithless elector case before the U.S.  
3 Supreme Court that spring, in 2020, and it could have completely upended the way  
4 modern campaigns had been dealing with electors.

5 So there was a lot of analysis of like how the process works, but I don't  
6 remember -- I don't recall a track related to the state legislatures prior to Mr. Giuliani  
7 taking over.

8 Q Okay. That's helpful. So when did you first hear and from whom about a  
9 potential avenue to change the outcome of the election through state legislatures?

10 A I don't know who I heard it from or the exact timing, but he, he meaning Mr.  
11 Giuliani and his team, I started hearing about meetings with leadership and electors in  
12 various states. I may have even been asked for contact info to people in touch with the  
13 Speaker of the House or some various and sundry statements.

14 I started hearing about meetings, started hearing about his kind of road show  
15 where he went out to do quasi-hearings with state legislatures around the country, and it  
16 became apparent that that was the track. I don't remember if someone told me  
17 specifically or I drew my own conclusions or if I read about it in the press, but it became  
18 apparent by early December that that was a track he was pursuing.

19 Q Okay. So is it fair to assume from what you've told us that you were not  
20 involved in developing the strategy for this track?

21 A No. I wouldn't have been. I may have answered questions with respect  
22 to how the process works, my opinion on esoteric legal theories, you know, as one-off  
23 things, but I wouldn't have recommended that someone pursue this track, and I certainly  
24 wouldn't -- I certainly -- I wouldn't have recommended someone pursue this track if I was  
25 asked.

1           Q    Okay.  Why is that?  Why wouldn't you have recommended someone to  
2   pursue this track?

3           A    Well, mostly because I think while there is like an esoteric legal argument to  
4   it and I think the argument may have some validity like in the text of Constitution, I don't  
5   think it's something that can be done absent clear evidence of something really horrific  
6   going on in the campaign.

7                Without -- it's almost something that I think would have be done to support the  
8   will of voters, and that just didn't -- it seemed off to me to try to circumvent actual  
9   avenues of figuring out what went on during the election.

10           The first step would be actually litigating and doing an election contest and  
11   litigating the election contest and investigating and then that would be a next step.  This  
12   was almost done, it seemed as if it was done, on a dual track with it, which just seemed  
13   off to me.

14           Q    So it was your understanding that Mayor Guiliani's effort, the efforts led by  
15   him on behalf of the President, were either dual-tracking a state legislature campaign  
16   with an election contest litigation or potentially replacing in priority the state legislature  
17   avenue over the process litigation; is that fair?

18           A    Yes.  That's fair.

19           Q    And you referred to an esoteric legal argument.  Are you referring to a  
20   theory about what was asserted to be the plenary power of state legislatures to choose  
21   electors?

22           A    Yes.

23           Q    Okay.  Generally speaking, what's your understanding -- and we don't have  
24   to get into too much detail about it, but what is your understanding of the theory?

25           A    Well, it's rooted in the 12th Amendment, which, you know, state legislatures

1 are empowered with the authority to administer time, place, and manner of elections,  
2 and under the 12th Amendment, there are certain theories that exist that a state  
3 legislature could send its own certificate of ascertainment to the president of the Senate  
4 with respect to which electoral votes to count from that state.

5 To be honest, I don't think that argument is without merit, but, again, I don't need  
6 to argue the ins and outs of the constitutional principle here, but I think that that is the  
7 argument at its core.

8 Q So are you -- was it your understanding that the effort led by Mayor Giuliani  
9 on behalf of the President to attempt to effectuate a different outcome in the election,  
10 overturn the results of the election through state legislature was tied to the role the state  
11 legislature could potentially play under the 12th Amendment?

12 A Yeah. Again, without having been part of any strategy meeting with  
13 respect to this, that's my assumption. I think it's the only one way -- the only thing that  
14 would make sense from those meetings or from the actions he took; otherwise, it  
15 wouldn't make sense to do at all.

16 Q So you mentioned earlier that you --

17 A I would also -- can I just add something really quickly?

18 Q Sure.

19 A I also at the time remember thinking it was completely fruitless, because  
20 there's no way these legislative bodies had the votes or the will to do that, because  
21 they're answerable to voters too. Beyond not thinking it was the right approach, I didn't  
22 think it was going work. I didn't know how it could work. There's no way that people  
23 had majorities to do this stuff.

24 Q Understood. Yes. And Just to be -- just so we have the full picture of your  
25 understanding, you referred to there being a potential avenue, esoteric as the legal

1 theory behind it as it may be, for a state legislature to send a certificate of ascertainment  
2 to the president of the Senate for the joint session to certify the results of the election.

3 Stepping back, what is your understanding of the normal electoral college process  
4 and the role that a certificate of ascertainment plays in that process?

5 A Well, a certificate of ascertainment -- I think this is from the Elector Count  
6 Act, I think. The certificate of ascertainment directs the president of the Senate to  
7 count -- to open a ballot with a certain set of electors on it. Right?

8 So the Vice President's office receives elector votes from lots of people, believe it  
9 or not, is my understanding, but the certificate of ascertainment ascertains who won that  
10 state and which electors should be counted when the votes are counted by Congress.

11 Q And in the normal course, who provides the certificate of ascertainment?

12 A I don't remember under the statute who it says they take the word of, but I  
13 believe it's an election official or executive within the state that's determined by the  
14 legislature. Then I think the legislature would have had some kind of authorizing statute  
15 delineating who that is.

16 I don't know that for sure. You'd would have to just -- you'd have to read the  
17 statute on that, but whatever the normal -- that would be whatever the normal course is  
18 on this stuff; but, again, the theory of this, which has some merit to it, is that 12th  
19 Amendment supercedes that and would give the legislature inherent power to send its  
20 own certificate of ascertainment.

21 I remember this argument coming up in the 2000 election at one point with  
22 respect to Florida.

23 Q Okay. But just to be clear, the normal course procedure is that the votes  
24 are counted and certified by the senior-most election officials in each state and the  
25 governor sends a certificate of ascertainment determining who has won state to the

1 various recipients, include the president of the Senate for certification; is that right?

2 A Taking a step back, the state figures out how they're going to allocate their  
3 electoral votes, whether legislature is going to pick them, whether they're going to be a  
4 popular vote, whether the governor picks. I mean, they can, in theory, do anything they  
5 want.

6 So they decide how they're going to cast electoral votes. Once it's determined  
7 that there's a popular vote to determine who the electors are going to be, the legislature  
8 comes up with a process for certifying those election results. Right?

9 Like in North Carolina, it's a Board of Elections. In other states, it's the governor.  
10 In other states, the secretary of state just does it.

11 Ten they have to follow that process and then a certificate of ascertainment  
12 comes from the executive in charge of that and it's sent to the Vice President's office  
13 saying count these votes, not any other votes.

14 Q Thank you. Just to be clear. Every state has determined that the popular  
15 vote is the manner by which they will select their electors. Correct?

16 A Yeah. That's correct.

17 Q Okay. Great.

18 You mentioned a little bit earlier when we started talking about state legislatures  
19 that you were potentially asked for contact information for the like Speaker of the House  
20 or another legislative leader. Do you remember which states and which legislative  
21 leaders you were asked for contact information for?

22 A I don't, but I was asked for contact information a lot during the campaign  
23 from people, because as I mentioned before, we did the delegates and party organization  
24 thing which, necessarily, you're dealing with every local elected official, legislative official  
25 in the state. You're interacting with those people.

1           So me or Nick Trainer or Bill Stepien had the contact information for like  
2 everybody. So just I would have been asked. I don't remember specifically if I was  
3 asked by one of Rudy's team or anything like that, but I may have been.

4           Q    Were you involved in any communications with legislative leaders or  
5 otherwise involved in setting up meetings for the President with state legislatures during  
6 the post-election time period?

7           A    I don't remember that, but, again, I could have been asked by somebody to  
8 call so and so and see if they're available for a meeting and tried to set up something up.  
9 It wouldn't have been of the ordinary. I just don't remember.

10          Q    Okay. What, generally, was your understanding of the purpose of those  
11 meetings?

12          A    Well, again, I don't remember the specifics of those meetings, but it at some  
13 point became apparent that when the President was meeting with state legislators from a  
14 state that it was about this dual path. That was me drawing -- making an assumption  
15 about that, but it was based on the news and, you know, it was widely reported a lot of  
16 times that these meetings were occurring.

17          Q    Yes, absolutely. So, for instance, Michigan and Pennsylvania are two states  
18 in which the President took meetings with legislative leaders that were reported at the  
19 time or around the time that they occurred. Did you ever have communications with  
20 the President, himself, or with anyone at the White House about the content of those  
21 meetings?

22          A    About the content of those meetings? I don't remember. I'm not even  
23 sure I was advised those meetings were taking place. I just don't remember.

24          Q    Any communications, again, with the President or anyone else at the White  
25 House or connected with the campaign that gave you an understanding of what the goal

1 or purpose was of those meetings?

2 A I don't remember any conversation like that.

3 Q Okay. Did you ever come to learn about campaign staffers making phone  
4 calls on behalf of the campaign to state legislators?

5 A Yeah, but it was -- I don't remember if it was after the fact, like from press  
6 reporting. It's been a year and a half and I just -- I don't remember where I heard it  
7 from.

8 Q Okay. What do you remember about the circumstances? How did those  
9 staffers for the Trump Reelection Campaign come to make phone calls to state  
10 legislators?

11 A I don't know how that came to be or why. I just learned that it had  
12 occurred.

13 Q Okay. So it didn't occur at your direction, I assume.

14 A I don't think so, no. I don't believe I -- I would not have been -- I didn't  
15 direct anybody to whip votes in the state legislature. I don't believe I asked anybody to  
16 call anybody with respect to this track of things.

17 Q Okay. Do you remember having conversations with Mike Roman about  
18 this?

19 A I might have. I think Mike was one of the people that was doing this on  
20 behalf of the campaign.

21 Q Did you come to have an understanding of what the purpose was for these  
22 calls?

23 A I don't remember. I may have talked to Mike about it. I may not have,  
24 but it would have been after I had already learned like kind of this dual track thing, but I  
25 don't remember the substance of any of those conversations.

1           Q    Did Mr. Roman tell you who had directed him to make these phone calls or  
2   have his team make them?

3           A    I don't remember the contents of any conversation I had with Mike, but  
4   from press reporting and possibly others -- I don't know who I heard it from -- it was at  
5   the behest of Mr. Guiliani's team.

6           Q    Okay. Did you tell Mr. Roman to have these efforts cease?

7           A    I don't remember having a specific conversation with him about these  
8   efforts. So I don't know if I told him that or not.

9           Q    Okay.

10          A    I wasn't in a position to make that call at that point, to tell someone to stop  
11   doing something. It wasn't my role on the campaign anymore.

12          Q    Okay. Just stepping back a little bit, either to think about other  
13   conversations that you had during this time period and even just setting here now, do you  
14   have any concerns about the fact that members of the Trump Campaign were calling  
15   state legislators during this post-election time period and also conveying to them a  
16   request that they take some action to replace or to change the outcome of the election?

17          A    Again, I don't remember any conversations, but I think I've told you I didn't  
18   agree with the approach for a variety of reasons, one, just from a basic concept, like it  
19   wasn't going to work; but, number two, I didn't agree with the approach because I don't  
20   think that remedy, if it exists and if it works, is appropriate without some indication of the  
21   will of the voters of the state wanting to take that particular action. Right?

22                But that's just kind of theoretically where my head is on that, but I also thought it  
23   was just an idea that wasn't going to work.

24          Q    Okay. Understood.

25                Do you remember participating in a meeting at the White House -- this could have



1       been November 11th, I believe, so before the time that Mayor Guiliani took over litigation  
2       efforts -- with President Trump and Vice President Pence as well as other senior campaign  
3       officials and Eric Herschmann where the topic of state legislators was discussed?

4               A     I don't remember that. I may very well have been there. I don't  
5       remember the specifics of the conversation.

6       [REDACTED]     Okay. Let's look at a document real quickly, if we can. This will be  
7       Exhibit 47, please.

8               I'm going to jump forward in time a little bit here, Mr. Clark.

9               Mr. Clark. Sure.

10       [REDACTED]     I'm sorry. Was there a question about the exhibit?

11       BY     [REDACTED] :

12               Q     Okay. While we're calling up Exhibit 47, this is going to jump forward in  
13       time a little bit to January 1st and then we'll come back, but this is an email -- sorry.  
14       These headers, when then expand, take up a lot of screen space for us. If we could just  
15       scroll down so that Mr. Clark and his counsel can read the full email, that would be great.

16               Perfect. That's the bottom.

17               A     Okay.

18               Q     This is the first email. We'll read the substantive text content at the top,  
19       but I see from Team Trump Action Alert, Mr. Clark, it looks like a draft of what was to be a  
20       blast cellphone text message and tweet. Is that format consistent with your experience  
21       on the campaign?

22               A     It's a little different from what we had done. We hadn't done anything  
23       quite like that, but it's not inconsistent with how we formatted stuff on the campaign.

24               Q     Okay. Great. And it does say -- you know, it has sort of a call to action,  
25       call and email these two legislative leaders in Georgia, House Speaker David Ralston,

1 Majority Leader of the Senator Mike Dugan, demand they call a special session  
2 immediately. Then it has bullet points:

3 "Here's the evidence of a false statement, demand and vote on decertification  
4 with a final vote. You're either with President Trump or you're against him."

5 A Yes.

6 Q Do you remember -- sorry. Go ahead.

7 A No. I just said I see that.

8 Q Do you remember any discussion about this text message alert? And I'll  
9 preview for you there are ones for other states as well, but just generally the format  
10 around this time period.

11 A I don't remember this specifically, but I -- I just don't remember it  
12 specifically.

13 Q Okay. Great.

14 If we could just scroll up and let Mr. Clark read the content of that, that would be  
15 great.

16 There we go.

17 So the first email is from Jason Miller, December 31st. I'll let you take a minute  
18 read that text.

19 A Okay.

20 Q Scroll up a little bit more.

21 There's a response from Mr. Cannon: "I defer to Rudy -- there's some material  
22 redacted, obviously.

23 "I defer to Rudy and his legal team to determine whether there may be any other  
24 legal consideration."

25 And then I believe Mr. Miller at the top responds again saying: "Thank you, Alex.

1 The Mayor requested the push and approved of the specific language via text."

2 A Okay.

3 Q So my question for you, Mr. Clark, and like I said, I represented to you that  
4 there are a couple of others, for instance, a similar format of blasts going out encouraging  
5 Trump Campaign recipients of these messages to call or email the legislative leaders in  
6 Michigan and also in Arizona in addition to this Georgia one that we're looking at.

7 So my question for you is just do you remember discussions around January 1,  
8 2021 regarding these type of messages?

9 A Not specifically, no, but I may have discussed Alex's answer with him, which  
10 would have been mine, like I don't have any input into this. You know, this isn't our  
11 show. We're not doing this. You know, Rudy and his team were part of -- were the  
12 legal team doing it.

13 So that's my only like vague recollection of this, but, you know, it wasn't -- I didn't  
14 agree with the approach. So I didn't weigh in, I don't believe, on this, and if I was asked,  
15 I would have told anybody on this thing that I didn't agree with the approach.

16 Q Okay. Is there a -- can you elaborate on what you didn't agree with? Is it  
17 the same as what you were telling us before, you know, about the practicality and the  
18 likelihood of success as well as the potential sort of problem with the theory behind it?

19 A Sure. Yes, a hundred percent right, and now that I'm reading this, I'm  
20 also -- it jogs my memory a little bit, because I either raised or Matt Morgan raised or Alex  
21 did -- I remember there being -- me talking to Jason at one point about state lobbying  
22 rules and how this could potentially run afoul of those, and I don't know enough about -- I  
23 only know enough about them to know it can be an issue and I didn't know about them to  
24 be able to articulate what they were in individual states, but I remember flagging that for  
25 either Jason or somebody at the some point. It was either me or Matt did, but I was on

1 some kind of conversation or -- I'm remember that now, because it had the same red flag  
2 moment.

3 Q Sorry. So you felt this was a red flag moment with respect to the potential  
4 implication of state lobbying laws; is that right?

5 A Correct, potentially. I didn't know. I just wanted everyone to be aware  
6 that they should look into this before sending something like this out.

7 Q Understood. What about your other concerns about this effort as a part of  
8 the overall state legislature track campaign effort; did you raise concerns more generally  
9 about that?

10 A I'm sure I did with people that would listen or wanted to talk to me about it,  
11 but, again, it was a small group of people that wanted to discuss things with me about  
12 this approach, that I didn't have any influence over changing policy. So within that small  
13 group of people that I would speak to, you know, Matt Morgan -- I'm sure I spoke to  
14 Murtaugh about it, Jason Miller, this isn't a good idea and I would have articulated it's not  
15 a good idea for the same reasons I discussed with you earlier.

16 Q Okay. Would Mr. Herschmann have also been a part of that small group  
17 that you would shared your assessment of the strategy?

18 A Yes. Again, I don't know the specifics of those conversations when that  
19 they occurred, but I would have articulated that.

20 Q Okay. Did you have any communications with other lawyers at the White  
21 House, including the White House Counsel, about state legislature theory or efforts?

22 A I don't remember talking to Pat about it, but that doesn't mean I didn't. I  
23 just don't remember.

24 Q Okay.

25

BY



1           Q   Really briefly on that, Mr. Clark, a moment ago when [REDACTED] was talking  
2 with you about the concerns regarding the Georgia texts that were in that, you said there  
3 was something else that you kind of remembered weighing in on that might have been  
4 related. To the extent that it jobs your memory, was it the email conversations about  
5 the television ads that they wanted to place in Georgia regarding election fraud?

6           A   No. In response to that question, I was actually referring to the lobbying  
7 disclosure law. I think I might have just said it twice, but that was what I was referring  
8 to when I was being asked a question before.

9           Q   Okay. And I vaguely remember that state lobbying issue, you possibly  
10 raising when they were also talking about putting the same content in television ads.

11          A   Oh, okay. I don't remember putting that same content in a TV ad, but,  
12 again, I know enough to be dangerous about state lobbying laws. I would have said,  
13 Hey, be careful. I'm sure I did.

14          [REDACTED] And that makes sense. No worries.

15          BY [REDACTED]:

16          Q   Okay. I'll keep going. I think I may come back to some of those  
17 advertising-type questions a little bit later.

18               Okay. Mr. Clark, did you -- so what was your understanding of -- this is mere  
19 days before January 6th, the email that we just showed you for the Georgia blast, January  
20 1st. Without trying your patience on our remote document system here, I will represent  
21 to you that there are emails from January 3rd and January 4th related to similar messages  
22 being sent for legislative leaders in Michigan and in Arizona in addition to Georgia.

23               So what was your understanding in this time period about the purpose of these  
24 calls going out on the days leading up to January 6th?

25          A   My understanding was an assumption that it was based on what we

1 discussed before, which was an understanding that I had come to gain with respect to the  
2 dual track that Mr. Giuliani was on related to state legislatures.

3 Q And, specifically, what was the intended result?

4 A I believe the intended result was the legislatures in those states that he was  
5 pushing to vote and send a certificate of ascertainment to the president of the Senate to  
6 count a different slate of electors than they had received from the executive in that state.

7 Q Okay. And setting aside the concerns that you addressed for us earlier, you  
8 explained to us earlier, did you have any specific concerns about this happening in such  
9 close proximity of time leading up to January 6th?

10 A I didn't actually think about it with respect to January 6th. That never even  
11 cross my mind in terms of proximity to it.

12 Q Okay. So let's rewind in the chronologically going back to probably late  
13 November or early December, and I'd like to ask for you to think of the first time that you  
14 heard of a plan or the idea of having Trump-Pence electors to meet in states where the  
15 election had been certified for the other team, for President Biden. When do you recall  
16 hearing about this concept for the first time?

17 A It was in a memo and a subsequent phone call from a guy by the name of Jim  
18 Troupis, who was the President's attorney in Wisconsin. This Wisconsin case that he  
19 was working on was -- I thought it was the real case. Like it was a case that had a  
20 remedy, that I believe we had the law right.

21 Actually, like I said, it ended up going to the Wisconsin Supreme Court and lost on  
22 a four-three vote. It was a real election challenge with respect to absentee ballot  
23 handling in Dane and Milwaukee County.

24 We were coming up on the date when electors would vote and I received from -- I  
25 either got a phone call or an email from Jim Troupis with a memo attached from a guy

1 named Ken Chesebro, and the memo outlined a concern that they had with respect to  
2 electors and the electoral voting, being that if this case was still pending on the day the  
3 electors vote and the Trump electors who had been duly nominated did not vote, the  
4 case would be mooted because we wouldn't have electors votes to count.

5 The memo outlined certain precedent for this in 1960. It was actually a  
6 pretty -- I thought a pretty thorough analysis and not an incorrect one to make sure that  
7 there were contingent electors in the event that, you know, an election challenge that  
8 was real, was proceeding, was mooted because they failed to vote. There was  
9 precedent for it and it seemed right to me.

10 Q Okay.

11 A I don't remember the specific date. I'm sorry, but it was around that time,  
12 end of November, early December.

13 Q Okay. That's very helpful.

14 So there are two memos of which I'm aware and have been published, reported  
15 and published, publicly in recently months authored by Mr. Chesebro. The first one fits  
16 the description that you gave. It's dated November 18, 2020.

17 Does that sound correct as far as the date of the memo that you reviewed?

18 A It's close enough. Yeah.

19 Q Okay. There's a second one that's dated December 8th. I believe. Do  
20 you know whether you later campaign to receive a second memo by Mr. Chesebro?

21 A I think I did. I read the press reporting, just as you did, and I believe I did  
22 receive that on December 8th.

23 Q Okay. But the context that you remember this first coming to your  
24 attention through Judge Troupis was in connection with the first memo?

25 A Yeah. That's how it came to my attention.

1 Q And that --

2 A Either he called and sent the memo or he just sent the and then called, but it  
3 was all around that time.

4 Q Got it. That's the memo that does deal with the 1960 election example and  
5 it focuses on Wisconsin as opposed to the later memo which addresses several states?

6 A Yes.

7 Q Is that your recollection?

8 A Yes.

9 Q Okay. So before I ask you more questions about the time period, just  
10 generally speaking, Judge Troupis, is this someone who had been retained by you and Mr.  
11 Morgan to represent the campaign in election litigation?

12 A So a really good question. I don't know if he was retained by the RNC and  
13 paid by them or retained by the campaign and paid by the campaign.

14 We didn't interview him. He came to the President directly. I don't know who  
15 connected them, but either way, I respect Judge Troupis a lot. I thought he was actually  
16 a pretty good lawyer and he was doing the right thing, but I don't know who paid him or,  
17 you know, who signed the -- no. You know, I think it was the campaign, but you'd have  
18 to check. I just don't have all of those documents in front of me.

19 Q Sure. Yeah. And I think it's not as important to us, you know, who was  
20 paying him, but, rather, the point -- we received testimony. I think you sort of told us a  
21 little bit about this yourself. We've had witnesses tell us that the lawyers that were  
22 retained by you and Mr. Morgan largely left the campaign at various points in late  
23 November and December because of disagreements with the Mayor Giuliani litigation  
24 strategy and other lawyers did come on board who were willing to work with Mayor  
25 Giuliani in that strategy.



1 I'm wondering whether Judge Troupis is someone who was there before that.

2 A So I don't know if he was there before that, but I -- he did not come through  
3 Mr. Guiliani. I know that. I just can't remember how he did come about coming in.  
4 The only reason I say that is because I still stayed in contact with Judge Troupis because I  
5 actually thought that case was real and he was doing it the right way, but he did not  
6 report directly up to Mr. Guiliani.

7 Q Okay. Thank you.

8 What about Mr. Chesebro; was he known to you before you received this  
9 communication from Judge Troupis?

10 A No.

11 Q Okay. What did you understand to be his connection to the litigation and  
12 the campaign?

13 A I thought he just worked for Jim, Judge Troupis. I didn't -- I don't even  
14 know if we had a separate engagement letter with him. He may have been working  
15 directly for him. I thought he was working directly for him. I actually came to find out  
16 he worked -- he was a separate attorney, like based in Massachusetts somewhere, but I  
17 don't know. He came to the campaign through Mr. Troupis.

18 Q Okay. And how did Mr. Troupis present his credentials or his background  
19 to you?

20 A I don't remember. He just presented me with a legal memo and probably  
21 told me about Ken's background.

22 Q Okay. And do you remember what the background was?

23 A No, I don't. No.

24 Q Okay.

25 A But I trusted Judge Troupis because, like I said, I thought he was a pretty

1 good lawyer and an honorable guy and I don't think he would have raised something -- he  
2 wouldn't have brought someone to me, I wouldn't have expected he would have brought  
3 someone to me, that was not good or raised an issue that was not a real issue.

4 Q Okay. So what did you do next after you received this communication or  
5 couple of communications from Judge Troupis and received memo authored by Mr.  
6 Chesebro in November?

7 A I don't remember the specifics, but I would have probably spoke to Matt  
8 Morgan about it. In fact, Matt may have been on the call with me and Judge Troupis.  
9 He may not have been.

10 I probably -- I think Matt tasked Josh Finley with looking into this stuff. Josh  
11 worked on the campaign, worked for us in delegates and party organization and then  
12 helped out in the campaign with EDO as the election drew to a close; and, like I said, the  
13 idea of a contingent electoral vote, Matt was right, but at some point, it morphed into  
14 something I didn't agree with, which was doing this like everywhere and doing it with not  
15 necessarily duly nominated electors, and then I kind of tapped out and I think Matt did  
16 too and I think Josh did too, because it turned into something that wasn't the original  
17 intention of that email or that memo.

18 Q Okay. And the original intention of the memo was kind of specific to the  
19 Wisconsin circumstance; is that fair?

20 A Sure. Wisconsin, but it would have applied anywhere where we had a real  
21 election challenge going on. Don't forgot like at that point in November, like Georgia  
22 was still kind of a mess on terms of what was happening. There had been this hand  
23 recount. All this stuff was going on in that contest.

24 The election contest in Nevada, I believe was still going on. It went on for quite a  
25 while.

1           So my point was in places where there's a legitimate election contest going on,  
2 something real, it seemed appropriate to me.

3           Q    And either based on your understanding from speaking to Judge Troupis and  
4 reading this memo by Mr. Chesebro or based on Mr. Morgan and Mr. Finley's research,  
5 what was your understanding of the process for this idea of contingent electors? How  
6 would that have worked?

7           A    Well, what would happen is the duly nominated electors, the people who  
8 were actually nominated to be electors by the Trump Campaign and were nominated by a  
9 state party convention or by the state chair or whatever the process was in that individual  
10 state would go to the Capitol and vote, cast their vote, fill out a form on a contingent  
11 basis casting a vote.

12           Then in the event that a -- and send it to the Vice President's office. In the event  
13 that the litigation was won or, you know, Walla, you know, you win the Wisconsin case,  
14 Wisconsin goes for Donald Trump, the executive in that state would then send a different  
15 certificate of ascertainment to the vice president saying count these votes, not those  
16 votes.

17           Q    Okay. Thank you.

18           And from your original concept where you understood it to be about contingent  
19 electors and connected to a legitimate election contest, litigation, was it your  
20 understanding that the votes not only would be cast, but would be sent to the Vice  
21 President?

22           A    It was my understanding, yes. I'm not sure there's any way around that in  
23 the statute. I don't remember my specific belief at the time, but that's the only thing  
24 that kind of makes sense to me; otherwise, you'd violate the statute by not getting them  
25 sent in time, presumably. So I think they would have to be sent.

1           Q    Okay.  So there was never, in your understanding, a plan or an idea that the  
2   electoral votes would be cast and held, not submitted to the Vice President?

3           A    I don't think so.  I'm not sure I got that far though, because by the time all  
4   the voting actually occurred, I was -- I had real problems with the process, like on the date  
5   they voted.  So I don't know how it ended up or what people thought.

6           Q    Okay.  Let's talk about what you said was the process morphing into  
7   something different.  So how did you come to understand that this was morphing?

8           A    I think there was an email either from somebody on Rudy's team or Ken  
9   Chesebro about doing -- having contingent electors vote in other states, and I just  
10   remember I either replied or called somebody, saying unless we have litigation pending  
11   like in these states, like I don't think this is appropriate or, you know, this isn't the right  
12   thing to do.  I don't remember how I phrased it, but I got into a little bit of a back and  
13   forth, and I think it was with Ken Chesebro where I said, All right, you know, you just get  
14   after it, like I'm out, and I believe I had a -- I probably told Matt and I probably told Josh  
15   like don't do anything more on this, this is like going down a road that just doesn't make  
16   any sense.

17          Q    Okay.  And make any sense because you have a problem with the sort of  
18   process, a legal issue with the process or --

19          A    It wasn't a legal.  It was more like why are we having contingent electors  
20   vote if there's no contingency whereby their votes are going to be the counted, like this is  
21   stupid, like why are we doing this.

22          Q    What was the response that you received?

23          A    I don't even know if there was a response.

24          Q    Okay.  Just rewinding a little bit, you said that you thought that you may  
25   have had this conversation directly with Mr. Chesebro?

1           A    I might have, yeah.

2           Q    Approximately, on how many occasion did you speak to Mr. Chesebro?

3           A    Not many. That's why I don't quite remember the specifics of the  
4   conversations that I did have with him, but it was either a phone call or in some kind of  
5   email exchange, I'm sure.

6           Q    Okay. Would that have been on your DonaldTrump.com email?

7           A    Yes.

8           Q    Okay. And, again, do you remember Mr. Chesebro's response to your  
9   raising concerns about the appropriateness or whether this was the right thing to do?

10          A    I don't. All I remember is it wasn't satisfactory. So I kind of indicated I'm  
11   out.

12          Q    Okay. What did you come to learn about what did happen, the process by  
13   which alternate electors were convened?

14          A    I mean, I learned it was kind of a haphazardly done project in a lot of ways.  
15   It sounds like -- again, a lot of this was from press reports. I really stayed out of it once I  
16   made my beliefs and understanding of the law known to people. It was just like kind of  
17   sloppily done.

18                It sounds like people who were not even nominated to be an elector voted.  
19   People were picking alternates to go and votes. You know, people raised concerns, it  
20   sounds like in press reports, that they didn't want to do it and I don't know if they were  
21   really pushed into it or not. Some states, I think did it the appropriate way and made it  
22   a contingent vote.

23                It just seemed sloppy and not particularly well done, and I never really tied it  
24   together with the legislative track we had discussed before until -- probably until after  
25   January 6th, but that was kind of the -- I don't know if they were done, you know,

1 contemporaneously or not for that purpose, but just it never sat right with me that there  
2 was no contingent for having these people -- there was no contingency whereby these  
3 votes would count. So I don't know if those two tracks were connected or not.

4 Q We can show you some examples, but I think it was publicly reported even  
5 at the time and, certainly, subsequently that these -- the existence of these votes cast by  
6 Trump-Pence electors was something that members of the legal team representing  
7 President Trump were drawing to the attention of state legislators across the country,  
8 telling them that they can take some action to recognize those electors and, thereby,  
9 have some effect on the outcome of the election.

10 Do you remember coming to learn about those type of statements?

11 A Not specifically, but that's the type of thing I'm talking about that I would  
12 have seen in the press after the fact.

13 Q Okay. And once you did make the connection between those two efforts,  
14 what were your thought, your reaction?

15 A I don't really remember what my reaction was, but I'm sure it was a little bit  
16 of an aha moment, but yeah. I don't remember.

17 Q What do you mean by -- what was the aha piece?

18 A Just figuring out what the purported contingency was for the vote. I really  
19 couldn't draw together when there was no contingency by which an electoral vote was  
20 going to be counted why you'd have a contingent electoral vote. The connection  
21 between how that the math formula was going to work after the fact was kind of like,  
22 Aha, now I get it.

23 Q I see. And you've identified Wisconsin, Nevada, and possibly Georgia as  
24 states during which at various different points, I think during late November or early  
25 December, there were legitimate election contests going on; is that right?

1           A    I think that's right.  Again, my timeline is not perfect on this.  So I don't  
2   remember a lot of the details, but that sounds right.

3           Q    What about the other states; did you think that there was a sort of valid  
4   election contest or a valid contingency in Arizona, for instance?

5           A    At that point, no, because Arizona's process for overturning the results of an  
6   election -- not even overturn.  Like their process by which you have a recount is really  
7   tight and that time period had already passed.

8                There was nothing legally, I didn't think, that could be done in Arizona to get a  
9   different result in that election at that point in time.

10          Q    What about in Michigan?

11          A    Michigan?  I don't remember the specifics of Michigan.  I don't know what  
12   federal cases were pending at the time.  I don't know what issues were there.

13               Michigan is a little bit looser in terms of how to challenge what you think is an  
14   incorrect count.  The margin in Michigan was very large and the odds of overturning that  
15   many votes just seemed almost impossible.

16          Mr. Garber.  Do you mean overturning votes or --

17          Mr. Clark.  No.  I mean having a successful recount when there's an  
18   150,000-vote margin just doesn't seem right.  It didn't seem like it would work.

19

BY [REDACTED]

20          Q    What about --

21          A    I don't remember the merits of those cases or the timing.

22          Q    Okay.  Thank you.

23               What about in Pennsylvania?

24          A    Again, similar issue.  The margin was such in Pennsylvania that effectuating  
25   a successful recount would have been highly unlikely to succeed, and I believe -- I could

1 be wrong, but I believe the time had passed for an election contest if it wasn't already  
2 adjudicated, I think, but I don't remember the -- again, I don't remember the specific  
3 timeline, but you had to get a very large margin in Pennsylvania.

4 Q Okay. And earlier, you told me that you came to understand that there  
5 were some concerns among the electors themselves who were being asked to convene  
6 and cast votes. Do you remember specifically what concerns you learned of?

7 A I don't remember the specifics. I remember reading some press reports  
8 about it after the fact.

9 Q Okay. And you did -- you also mentioned that you understood that at least  
10 a couple of the states, the electors there, made their votes contingent. Can you tell me  
11 what you remember about that.

12 A Again, I believe it was from press reports, but I think Pennsylvania cast their  
13 votes and in their voting certificate put that it was a contingent vote.

14 Q Do you remember any discussions at the time when you first learned about  
15 the possibility of this plan, about whether the votes shouldn't be -- should stay on the  
16 certificate itself that they're contingent?

17 A I don't remember having a conversation about that.

18 Q Okay. Did you ever learn or come to understand other concerns raised by  
19 the Trump-Pence electors, including potentially seeking indemnification from the  
20 campaign?

21 A Indemnification? At the time, like somebody looking for an indemnification  
22 agreement from the campaign?

23 Q Correct.

24 A I don't remember that.

25 Q Okay. There is some -- our investigation has developed evidence,



1 information that electors, particularly in Pennsylvania, were asking before, you know,  
2 December 14th before convening whether the campaign would indemnify them for their  
3 conduct. What does indicate to you about the process?

4 A I mean, I would let that, someone seeking an indemnity, speak for itself. I  
5 don't remember that and I can't get inside their minds about why they wanted it, but,  
6 typically, someone would want an indemnification on something because there was a  
7 concern about liability in some form or fashion.

8 Q So let's go back really quickly. I know you told me that the first time that  
9 you heard of this in the context of the 2020 -- after the 2020 election was in this  
10 communication with Judge Troupis. Had you heard of the concept of contingent or  
11 alternate electors at any other election or in 2020 before Election Day?

12 A Yeah. In 2016, there were -- I was the Electoral College whip for Trump in  
13 2016, and there had been a news report about the Clinton Campaign deciding whether or  
14 not to have contingent electors vote.

15 Q Okay. What about in the 2020 cycle? There was a -- an article was  
16 published in "The Atlantic" in September of 2020 that suggested the possibility that the  
17 Trump Campaign might test the assumption that electors were to be chosen by the  
18 popular vote. Do you remember that article?

19 A No, I don't.

20 Q Okay. It also identified specific party officials and leaders in Pennsylvania  
21 who were aware of these types of communications and led to a press release, a formal  
22 statement, by the legislative leader in Pennsylvania sort of disavowing the role for a  
23 state legislature in selecting electors. Do you remember that?

24 A I don't. I don't remember that, no.

25 Q Okay.

1           A    I don't remember.

2           Q    Did you speak with Mr. Miller in particular about that?

3           A    It might have happened, but I don't remember that specifically.

4           Q    Okay. So you sort told us you sort of originally understood the concept, the  
5 contingent and specifically tied to the State of Wisconsin and a legitimate election  
6 process, and then in the process of -- you said you saw a writing, an email or a memo of  
7 some kind that reflected this change to expand it to other states.

8                I don't mean to mischaracterize your testimony, but generally speaking, is that a  
9 fair summary of what you've told us?

10          A    Generally speaking, that's fair summary.

11          Q    I earlier referred to a second memo that was drafted by Mr. Chesebro dated  
12 December 8th. Do you know whether that is the document that you saw that changed  
13 your understanding of it?

14          A    I don't. So I don't think it was. I think it was a communication with Mr.  
15 Chesebro, to be honest with you, with respect to coordinating electors to vote,  
16 contingent electors to vote, and then there were states listed there that were -- I didn't  
17 think there was a need for contingent electors. I couldn't imagine a situation where a  
18 contingent elector's vote would be counted. So there's no contingency.

19          Q    Okay. December 8th was also the safe harbor deadline for the Electoral  
20 College after the 2020 election. Do you remember whether this document that you saw  
21 from Mr. Chesebro was before or after the safe harbor deadline?

22          A    I don't remember.

23          Q    Did the fact that each of the 50 states had sort certified and submitted a  
24 certificate of ascertainment determining the winner of that state, you know, vote by the  
25 safe harbor deadline, did that factor into your assessment of whether it was appropriate

1 to have contingent electors vote?

2 A No. I view the safe harbor date as a little bit of a false deadline. I just  
3 don't think it matters as much as some people do. So it wouldn't have factored in my  
4 thinking at all on that.

5 Q Okay. You were aware that each of the 50 states had submitted  
6 certificates of ascertainment though?

7 A I don't know if I was aware at the time or not, but I could have been.

8 Q Okay. So if it wasn't the safe harbor deadline, you know, as a mile marker  
9 to try to figure out when in the course of December you had this understanding that the  
10 process had morphed, how far in advance of December 14th, the Electoral College  
11 deadline, how far in advance do you estimate it was?

12 A I don't remember. I couldn't guess, but it was at some point after Mr.  
13 Chesebro's first memo and sometime prior to the vote.

14 Q Okay. Closer in time to the vote than to the first memo?

15 A I couldn't say.

16 Q Okay. We have received other testimony that indicates that this shift was  
17 perceived after the safe harbor deadline. Do you have any strong reaction? Would  
18 that be inconsistent with your understanding?

19 A No. It wouldn't be inconsistent at all. I just don't remember.

20  Okay. Let's look at Exhibit 33, please.

21 This is going to be an example of an email that went out from Mr. Chesebro, Mr.  
22 Clark, and in this case, it went out to the leaders of the electors in Georgia. It's not  
23 going to be a memorization quiz, but certainly take a minute to go ahead and look at it  
24 since you're not on this document.

25 Mr. Clark. Sure.

1 [REDACTED] Let us know when you've had a minute to review.

2 [Witness peruses exhibit.]

3 Mr. Garber. While he's reviewing it, so when I said I didn't have a hard stop, I've  
4 got something at five-ish. So, presumably, we will be done about then; does that make  
5 sense?

6 [REDACTED] We will definitely try to meet that. When you said it's not -- like is it  
7 a hard stop? Because at the break --

8 Mr. Garber. Yeah. The hard stop for me is 5:30. Yeah.

9 [REDACTED] Is it a hard stop or would we be able to take a break and possibly  
10 come back?

11 Mr. Garber. No, no. It's a real hard stop. Plus by then, we'll have been going  
12 for many, many hours.

13 [REDACTED] No. I realize that. What I would say is if you can give us a little bit  
14 of time, we may need to take a break and coordinate and move some things around in  
15 order to address that time frame.

16 Mr. Garber. Yeah. That's why I wanted to bring it up now.

17 [REDACTED] Okay. Perfect. [REDACTED] is going to kind of finish her line of  
18 questioning, and when we reach a stopping point, we'll deal with that.

19 Mr. Garber. All right. Thank you.

20 [REDACTED] Thank you.

21 [REDACTED] Thanks.

22 BY [REDACTED]

23 Q Mr. Clark, have you had a chance to look at this email?

24 A Yes.

25 Q In particular, I want to draw your attention to the second paragraph. It

1 starts: "I spoke this evening Mayor Giuliani. We focused on doing everything possible  
2 to ensure that all the Trump-Pence electors vote on December 14th. He is hopeful that  
3 the Georgia electors will go along with this strategy. "

4 Do you see that?

5 A I do.

6 Q What's your reaction to reading that statement?

7 A I mean, it's consistent with my understanding of who was driving the  
8 process. It was Mayor Giuliani and his team.

9 Q Okay. Did you ever hear directly from Mr. Chesebro about his  
10 communications with Mayor Giuliani?

11 A I don't remember if he told me about his communication with Mr. Giuliani or  
12 not.

13 Q Okay. In the interest of time, I will just describe to you another document,  
14 but I think it's a description that you provided earlier. There's an email from you to  
15 Mark Meadows providing contact information for the electors in six states. It's dated  
16 December 10th.

17 I think you did refer to earlier getting requests about contact information. Do  
18 you remember specifically Mr. Meadows reaching out to you to ask for contact  
19 information of electors?

20 A I don't remember that, actually. I don't.

21 Q Do you know why Mr. Meadows would have been involved with electors?

22 A I don't. I know he was very involved in a lot of things at the end, but I don't  
23 know why he was involved with electors specifically.

24 Q Did you ever come to learn that Mr. Meadows had a role in developing the  
25 plan for electors to meet in contested states?

1           A    Yes. I think I read that in a press report, actually, but I don't think I knew it  
2   at the time.

3           Q    Okay. Other than what you read that's been publicly reported, did you  
4   learn about that from any other place?

5           A    I don't think so. I might have, but I don't think so.

6           Q    Okay. What about a lawyer who was active in Georgia I don't think we've  
7   talk about yet by the name of Cleta Mitchell; were you aware of her involvement with the  
8   contingent or alternate electors?

9           A    No. I wasn't aware that she was involved with the contingent electors.

10          Q    Okay. There are couple of other individuals that we see on emails similar  
11   to this one affiliated with the campaign, including Nick Trainer. Do you know what his  
12   role was with respect to the electors?

13          A    Oh, Nick would have been someone to get -- again, Nick work with me in  
14   delegates and party organization. Nick would have had a ton of contact information.  
15   Nick probably connected people.

16                I don't think he had a role in electors per se, but I'm sure he had everybody's  
17   contact information, because as part of delegates and party organization, we were in  
18   charge of vetting and selecting the electors to be nominated in the state. I think he  
19   literally knew all of them.

20          Q    I see.

21          A    So he would have connected everybody.

22          Q    Did you share your concerns about the appropriateness of this process with  
23   Mr. Trainer?

24          A    I don't know if I did or not.

25          Q    Okay. What about with Boris Epstein; do you know what his role was?

1           A     I mean, Boris worked for Mr. Guiliani. You had mentioned before when  
2     you were talking about being in the White House. Mr. Guiliani's associates would  
3     have -- before the election, I didn't consider him a Rudy Guiliani, but by then, he definitely  
4     was, and I have come to understand -- I guess I didn't know at the time, but I've come to  
5     understand that he was very involved in the elector process.

6           Q     Okay. Anyone else who you know of in addition to Mr. Guiliani, Mr.  
7     Epstein, Mayor Guiliani, himself, who was involved in convening the electors?

8           A     I don't remember anybody else. I don't remember anybody else.

9           Q     Okay.

10          A     Other than who I might have mentioned.

11          Q     Okay. Who else did you speak to about your conclusions or your  
12     assessment about the appropriateness of this process?

13          A     Again, it was an ever dwindling group of that would listen to me, but it  
14     would have included Matt Morgan. I'm sure it included Josh Finley.

15                 Well, I'm not sure. With both of them, though, I think I cautioned them at some  
16     point. It could have been other people too that were not really in the decisionmaking  
17     authority component.

18                 Like you mentioned Mr. Trainer. I don't know if I spoke to him about it or not,  
19     but I may have. Mr. Miller, Jason Miller, I don't know if I spoke to him or not, but I may  
20     have, that group that I kind of mentioned before that I still talk to.

21          Q     Okay. Did you speak to White House Counsel, either Mr. Cipollone,  
22     himself, or the others in his office like Mr. Philbin about this?

23          A     I don't remember that, but I may have. If we were having a conversation  
24     about something else and they asked me my opinion, I would have told them.

25          Q     What level of detail? I know you shared with us your conclusions, but what

1 do you remember that you would have told someone like the White House Counsel if  
2 they asked?

3 A I don't remember telling them anything, but we talked enough that it could  
4 have come up and I would shared with them my thinking on this at the time, I presume,  
5 too.

6 Q We received testimony indicating that White House Counsel's Office, either  
7 Mr. Cipollone or Mr. Philbin, individually or together, did not believe that there was a  
8 legal basis for the meeting of the Trump-Pence electors as occurred on December 14th.  
9 Is that consistent with your conversations with them?

10 A Well, I don't remember talking to them about this, but it's consistent with  
11 my understanding of their abilities as lawyers, and if I did talk to them about that, we  
12 would have shared the same opinion. I just don't remember having that conversation.

13 Q Okay.

14 A That's consistent. It's consistent.

15 Q Okay. What about either the Vice President, himself, or members of his  
16 staff in OVP; did you discuss the concept of alternate or contingent electors with them?

17 A I don't think so. I don't think I did, but I don't remember specifically. I  
18 would have only -- the only people I spoke to over there were either the Vice President or  
19 Mark Short, and I don't remember having a conversation with either of them about  
20 alternate electors, contingent electors.

21 Q Are you aware of Mr. Morgan having communications -- I know he used to  
22 be counsel to the Vice President and continued to represent him in a different capacity  
23 during this time period. Are you aware of any communications between Mr. Morgan  
24 and the Office of the Vice President about this?

25 A Specifically about this, I don't. I don't know. Matt didn't share the



1 contents of any conversation with the Vice President's Office. I'd be shocked if he did  
2 not speak to them about, because I'm pretty sure he was in regular contact with them.

3 Q And was Mr. Morgan's assessment of this idea of contingent or alternate  
4 electors consistent with yours?

5 A Yes.

6 Q Okay. In particular, did Mr. Morgan have a view of this related to the Vice  
7 President's role on January 6th?

8 A I'm not sure we discussed it with respect to the Vice President's role on  
9 January 6th. I don't remember having the conversation.

10 Q Okay.

11 A Prior to January 6th anyway or even after. I'm not sure we talked about it,  
12 but I don't remember having that conversation with him.

13 [REDACTED] Okay. Let's see.

14 All right. I'm just going to look at my notes really quickly in light of the time  
15 constraint and see if I can streamline this a little bit.

16 [REDACTED] Actually, could we take a five-minute break briefly, just really quickly?

17 Mr. Clark. Sure.

18 Mr. Garber. We'll see you in five minutes.

19 [REDACTED] Perfect. Thank you so much.

20 [REDACTED] Thank you.

21 [Recess.]

22 [REDACTED] We're back from recess at 3:20 p.m.

23 My colleague, [REDACTED] has a couple more questions and we will try to keep it  
24 moving.

25 [REDACTED] Thank you.

1

BY [REDACTED]:

2

Q Mr. Clark, just rounding out our discussion about this idea of alternate or contingent elector, did you speak with Mr. John Eastman about this topic?

4

A I don't remember speaking to him about this.

5

Q Okay. We have seen some communications between you and Mr. Eastman in early December. Do you remember what the context was for you speaking with him then?

8

A I don't. I'd need to see the communications.

9

Q Okay. I think it is just an email in which you provide your phone number to him, which, you know, indicates, perhaps that you were arranging to have a phone call.

11

A Okay. I don't remember having a phone call with him, but it doesn't mean I didn't, but I don't remember it.

13

Q Okay. Did you ever come to learn about a role that Professor Eastman played in either the practical steps or the concept of the meeting of Trump-Pence electors?

16

A I don't remember learning about his role in that. I've, obviously, seen the press reports with respect to the certification of the vote on January 6th and Mr. Eastman, but I don't remember a discussion. I don't remember learning about his role in the electors piece of it.

20

Q Okay. And in your communications with Mr. Chesebro about this topic, did Professor Eastman's name come up?

22

A I don't remember.

23

[REDACTED] Okay. Thank you very much. I'll hand you back off to my colleague, [REDACTED]

24

25

[REDACTED] All right. Mr. Clark, we're going to change gears a little bit and ask

1     you about some seemingly related topics. Our focus may focus more on some of the  
2     financial aspect in your role, I believe you said earlier, as the deputy campaign manager  
3     on the budgeting process.

4             So I want to turn first to Exhibit 1.

5



6             Q     This is an email from Jason Miller to -- if you look at the bottom, this is an  
7     email dated November 12th from Jason Miller to Mr. Stepien, you, I believe Murtaugh,  
8     and this is regarding an individual named Ali Alexander. You can see him in the tweet  
9     that is listed there where he says: "This is one of the most important fights in our  
10    lifetime."

11            And the tweet is from November 14, 2020. I don't know if you see the  
12    individual's face. We might be able to zoom in a little or you may be able to zoom in,  
13    but do you recognize that individual, Ali Alexander?

14            A     I don't think we personally met, but I recognize his picture from the news.

15            Q     From the news, and prior to the news reporting on the events of January  
16    6th, did you know who Ali Alexander were, either by face, reputation, name?

17            A     No.

18            Q     Were you aware of his organization, Stop the Steal?

19            A     I've heard of the organization Stop the Steal at some point in 2020, but I  
20    don't think I would have been able to affiliate Mr. Alexander with that organization.

21            Q     Do you remember where you heard of the organization Stop the Steal in  
22    2020?

23            A     I think I heard about a Stop the Steal rally that was occurring in D.C. at some  
24    point after the election.

25            Q     Okay. Do you believe it was the November 14, 2020 rally that's listed there

1 at Freedom Plaza?

2 A I don't remember.

3 Q Okay. But you think it was a rally in 2020?

4 A I believe so.

5 Q If you scroll up, the response at the top, after Jason says who from the team  
6 should go speak at this, Mr. Murtaugh says "Jenna?".

7 Why do think he suggested Jenna, and to the extent that you remember the  
8 context, did you think that was sarcastic?

9 A I don't know why he would have suggested Jenna and it could very well have  
10 been sarcastic. It also could have been serious.

11 So I don't know how to characterize that.

12 Q Just to give you some context, it's very difficult for us after the fact,  
13 especially with the personalities involved. We can see from communications, Mr.  
14 Murtaugh has a very healthy sense of humor, especially sarcasm. So as somebody who  
15 knows him well, we don't want to read into something. You're the better expert of the  
16 tone.

17 So what we were trying to see is is he objectively suggesting Jenna on November  
18 12th or is there kind of like why don't we send one of the crazies out after the crazies kind  
19 of tone to this?

20 A It's a little bit of the latter, but the latter could be serious. Right?

21 Q That's fair.

22 A I mean, he does have a healthy sense of humor. He's super sarcastic.

23 I actually think it's a little bit of both. I don't know what the response was to  
24 sending Jenna, the answer to sending Jenna out to this, but I find it kind of funny. I also  
25 think it could be serious.

1           So I'm sorry. I can't really pick a side of the net it's on.

2           Q   That's a very helpful answer. Just out curiosity, sitting here today, can you  
3 remember hearing the name Ali Alexander after this November 12th email, but prior to  
4 the events on January 6th?

5           A   I don't remember if did or not. It certainly wouldn't have been a  
6 remarkable event if I did. So I can't remember.

7           Q   And you don't remember being a part of any discussions about whether Mr.  
8 Alexander would speak at the events on January 6th?

9           A   No. I don't think I -- I am -- I don't think I was involved in anything with  
10 respect to the events of January 6th.

11           [REDACTED] Okay. If we could turn to Exhibit 13.

12

BY [REDACTED]

13           Q   This is a series of emails, I believe, between Mr. Murtaugh, Mr. Stepien,  
14 Jason Miller, and Matt Morgan, and if you scroll to the bottom, there's discussions bout  
15 columnists, I believe. We can just -- so there's is a campaign email, I believe, that Mr.  
16 Miller received, and then it looks like he may have forwarded that to you guys, saying:  
17 "Alexa, we need to know which weekend shows we can put lawyers on to talk affidavits.  
18 Chad needs to know which of our high-brow columnist we can get to sit down for a virtual  
19 one-on-one briefing tomorrow so they write up summaries.

20           Singular goal, shift the narrative from, quote, where is the evidence to, quote,  
21 Wow, that's a lot of evidence."

22           So this is on November 12, 2020. If we scroll up a little bit, Chadwick asks Tim  
23 Murtaugh, and if you keep scrolling up -- there we go.

24           I think Ms. Henning responds. Now stop right there. If we could scroll up just a  
25 little bit.

1           When Miller responds here on November 12th, he says: "Excellent. Pitch away  
2 to all shows. Justin -- I believe he's addressing you. You're the only Justin on the email  
3 there, but correct me if I'm wrong.

4           He says: "Justin, please let us know when tomorrow you can do phoners with  
5 me, Tim, and columnists to brief them. Would like to knock out several."

6           Now if we scroll up just a little bit, Murtaugh says: "Justin, do you want to get on  
7 the phone with a handful of these columnists?"

8           He lists some columnist, and if we scroll up just a little more, you respond back  
9 minus Alexa and Chad. So now this is just Miller, Stepien, you, and Morgan: "What are  
10 we going to say to them?"

11           Now, this is November 13th. Can you explain what your concern was there in  
12 terms of what you would or would not have to say?"

13           A I don't remember a ton about this specific interaction, but the timeline, I  
14 believe this puts me right around the time when I got pushed out, and they're discussing  
15 affidavits, that we didn't really have any, and that was like a sore subject with Mayor  
16 Guiliani, who claimed to have affidavits on things and didn't at times.

17           So I think I'm not trying to be cheeky, but like what are we talking about with  
18 these people. I don't even know how this ended.

19           I actually talked to the press quite a bit for the campaign on various issue on  
20 background. I don't think I'm trying to be sarcastic at all there. I just literally didn't  
21 know what we were going to say to these reporters.

22           Q If I remember correctly from testimony earlier, this was right before you and  
23 Morgan kind of extricated yourselves and said you are not longer counsel and Mr. Guiliani  
24 would be taking over from there forward.

25           A Well, we didn't really say that. The President tweeted it, I believe that next

1 day or that day, right around that time, and when that happened, Matt and I extricated  
2 ourselves, but the precipitating event was the President.

3 Q Got it. Okay. That's a very helpful clarification. I appreciate that.

4 So one of the things that we wanted to talk with you about, and we can take that  
5 exhibit down, is the election litigation funding. So a couple of times when we've been  
6 talking to you, you've mentioned some terms that we just wanted to kind of get some  
7 clarity on, and from our perspective, let me be clear.

8 We spoke with your attorney about this. I'm not necessarily -- I'm not asking you  
9 questions about privileged communications that you've had with your clients. What I'm  
10 trying to get at is the non-privileged aspect of who was paying for the election-related  
11 litigation. So to the extent that there were buckets for that, we're going to ask you, to  
12 the best that you can remember, if you can explain that to us.

13 So, earlier, I believe you mentioned EDO, which my understanding is it's Election  
14 Day Operations. Is that correct?

15 A Yes.

16 Q And this is, in my understanding, this is like boots on the ground out, out and  
17 about, helping poll workers, volunteers, etc. It is not necessarily cases filed challenging  
18 the ballots. Is that right?

19 A More or less. I mean, in terms of budgeting, I'm not sure there was a clear  
20 delineation by the end between those two buckets of budget items.

21 Q Okay. That's very helpful. So anywhere where you can tell us where it's  
22 not clear, that would explain a lot and is very helpful. If it's not clear and it's murky, just  
23 tell us that.

24 A Okay.

25 Q To the extent that you know, for Election Day operations, do you know if

1 those were paid by the RNC or by the campaign?

2 A It would have been both at some point. Early on, we had come up with  
3 a -- I believe it was the first year that the RNC was not under a consent decree that barred  
4 them from doing Election Day operations.

5 So early on in the cycle, I had helped out Brad Parscale, who was the campaign  
6 manager, in coming up with a budget for the campaign with RNC Legal with EDO. That  
7 budget ended up getting thrown out the window, like VDOT 50. Do you know what I  
8 mean?

9 But it was -- what that recognized was that it was going to be -- we were going to  
10 kind of split the bill in some form or fashion. The RNC has a legal proceedings fund that  
11 under the law allows them to spend money on lots of stuff related to legal expenditures.

12 So as money was coming in -- and campaigns are, obviously, barred -- or not  
13 barred, but we have hard money limits that the RNC doesn't necessarily have. They  
14 have much higher limits. So as money was in and we needed to put on money TV and  
15 get -- you know, we were in our coordinated expenditure limit. The RNC would pick up  
16 more tabs.

17 So a long windup to say it was paid by both in some form or fashion.

18 Q And was there a negotiation about the split as to who would pay how much?

19 A There were several negotiations as to who would pay how much. Matt  
20 Morgan was the -- but after July 2020. Before July 2020, there really wasn't a great  
21 budget control process on the campaign, but after 2020 or after July 2020, Matt took the  
22 laboring oar in terms of negotiating with the RNC about who was going to pick up what,  
23 and then I was having broader conversations about different items in terms of what they  
24 were going to pay for versus what the campaign committee was going to pay for.

25 Q And were those broader conversations regarding like the broader legal



1 budget or just all?

2 A Broader budget generally, so who's going to pay for this travel, who's going  
3 to pay for event, who's going to pay for this, how are going to hit the coordinated limit for  
4 television expenditures and digital, who's going to pay for digital, who's going to pay for  
5 this turnout stuff, who's going to pay for these staffers on the ground in Texas, in Florida.

6 That's the broader conversation, like everything.

7 Q And was that you having those negotiations with them or was Mr. Kushner,  
8 Jared Kushner, involved in those?

9 A Jared was involved with it.

10 Q Would you say he was heavily involved in the negotiations with the splits?

11 A Yes.

12 Q Okay. And did he and you directly negotiate with Ronna McDaniel?  
13 Richard Walters? Both?

14 A Both.

15 Q Who did you deal with the most, if you had to say, between Ronna and  
16 Richard?

17 A Richard mostly.

18 Q And was there always a written agreement?

19 My understanding is there was like a JFA. Was there always a written JFA that  
20 delineated the splits at different times?

21 A Well, that JFA, though, was just about the fundraising. So that's on the  
22 revenue side, not on the expenditure side.

23 Q Okay.

24 A That JFA was constantly renegotiated, which is fine. That's kind of how it  
25 should work based on who needs the money and what bucket it's going to go in at any

1 given time.

2 So any expenditure discussion or change usually implicated the Joint Fundraising  
3 Agreement, because it would be like, Okay, RNC, we need you to pay more. They would  
4 say, Okay, we need to get more out the JFA then, a higher percentage.

5 Q So, frequently, the negotiations would start with the expenditures, but was  
6 the expenditure split in the JFA?

7 A No. No. The Joint Fundraising Agreements are only about the revenue  
8 side. I don't we ever memorialized any -- I don't remember memorializing any  
9 expenditure split to paper. Maybe we did. I don't remember doing it though.

10 Q What was the normal way that you remember? Was it just a verbal  
11 agreement of a percentage?

12 A Just verbal, we need you to pay these invoices. It was always expense  
13 specific.

14 Q Okay. So it was more --

15 A We're going to be pay for this staffer or you're going to pay for that staffer,  
16 you're going to pay for this event and we're going to pay for that event, we need you to  
17 pick up this tab.

18 It was never about a -- it was never really a percentage on the expenditure side.  
19 It was always a percentage on the Joint Fundraising Agreement. That's the only way you  
20 can make the waterfall work, really.

21 Q Okay. And we're going to come to that. So that makes sense.

22 Would Bradley Crate have been involved in the discussions given his relationship  
23 with the two parties?

24 A I don't remember him being involved, but he may have. He may have had a  
25 conversation, but it really -- it was really more of a political conversation as opposed

1 to -- it was about a budget, a campaign budget, and Brad would have, as a party to this,  
2 would have wanted to know it was happening and that everything agreed to it and that  
3 everything was above board, and as long as those three indicia were checked, he was  
4 usually fine with everything.

5 Q So I want to focus on the legal budget, specifically, the election  
6 litigation-related expenses. So I think, earlier, there were some names you mentioned,  
7 but to the extent that you can, can you walk us through how does the funding of  
8 election-related litigation happen in the sense that you mentioned Mr. Giuliani coming  
9 in? I believe we talked about Jenna Ellis.

10 When all of these folks start coming in in November, how are they being retained  
11 and who is paying them?

12 A Yeah. Good question. Well, Ms. Ellis was -- she was on the campaign  
13 months prior to November. So she was being paid anyway as a consultant. She was  
14 hired before my time. Well, not before my time, but before I was dealing with  
15 budgetary issues.

16 In November, after Matt and I stopped doing day-to-day litigation work on the  
17 campaign, one of the roles I kept on was budgetary in nature, and we would -- the way it  
18 would work is someone -- and I say someone, because I didn't necessarily know who it  
19 came from -- would say we need to hire this attorney or this law firm, and Matt and/or I  
20 would negotiate the terms of the engagement with them, and, you know, sometimes it  
21 worked. Sometimes it didn't and we couldn't come to an agreement.

22 Then I think the campaign largely paid for it, but the RNC may have picked up the  
23 tab on some of these legal expenditures at that point, but I think it was predominantly  
24 campaign.

25 Q How did it get decided, to the extent that you remember, whether

1       somebody was paid out of campaign funds or RNC funds? Who decide that?

2           A     I don't remember specifically, because it was always kind of a fluid situation  
3       in the sense of something comes in, here's an expenditure, Hey, who would be -- the RNC  
4       should pay this or we should pick this up.

5           So any person could have called from the RNC or from the campaign and said,  
6       Hey, we think you guys should pay for this or we would call the RNC and they'd say, Hey,  
7       you guys should pay for this.

8           So it was really a case-by-case basis. I don't think there was any hard and fast  
9       rule.

10          Q     And I think, earlier, you said that you interviewed some of the attorneys.  
11       Were you and Mr. Morgan conducting kind of like an interview process of who was  
12       applying to conduct litigation for the campaign?

13          A     If I said that, it was kind of a misstep or foot fault on there. What I mean by  
14       that is like in November, we didn't interview anybody, but Matt would vet attorneys, and  
15       that would mean we would talk to them. Matt was doing most of it. Matt was  
16       interacting with the lawyers that we had retained. So there would be a vetting process  
17       with everybody.

18          After November, the vetting process was less about us being comfortable with  
19       them as an attorney and more about just making sure that they weren't going to, you  
20       know, rip the campaign off, that they were like remotely competent, and that we had  
21       some kind of budget approval authority from somebody that was still making decisions.

22          Q     Now, I'm assuming that this was particularly for the cases that were brought  
23       on behalf of the campaign, but for cases that weren't brought for the campaign, how did  
24       you handle those, if they were kind of, let's say, campaign adjacent, but other parties?

25          A     You'd have to give me an example of a case. Unless the campaign or the

1 President were a party to the litigation, I'm not aware of us retaining anybody. I could  
2 be wrong, but I don't think we did.

3 Q No. That's super helpful, because off the top my head, I can't remember a  
4 name, although, that's probably a [REDACTED] question, because she knows that area  
5 much better than me, but my understanding is that there were cases that were brought  
6 on behalf of Mr. Trump and then there were cases that were brought on behalf of the  
7 campaign, but then there could have been cases brought by -- I believe there was a  
8 congressman or the State of Texas, the AG's case.

9 A Okay.

10 Q So where there were cases that could have impacted the outcome of the  
11 election --

12 A Sure.

13 Q -- but weren't the President or the campaign, did you and Mr. Morgan have  
14 any involvement in those cases or the attorneys who were retained on those cases?

15 A I don't remember who was retained on those cases to prosecute those. I  
16 don't remember who the campaign paid on those.

17 Yeah. I don't remember.

18 Q It sounds like you're saying it's possible.

19 A It is definitely possible. You're bringing up a good point, and those two  
20 might be it, to be honest with you, those two cases, but I don't remember us engaging  
21 anybody, but it's totally possible that we did.

22 Q So in the moment -- and I'm not being coy here. I'm trying to kind of like  
23 organize and use the best use of time -- we'll show an email where you kind of break  
24 down the legal spend, but do you know if anybody kept a tracker or a record anywhere of  
25 cases that were being brought where the attorneys were being paid by the campaign?

1           A    Prior to Election Day, Matt probably would have kept something like that. I  
2 don't know if it was being tracked.

3           Q    At all?

4           A    No. I don't know. It wasn't being tracked by me. I don't think Matt was  
5 tracking it.

6           Q    So it made have been the -- okay. I just want -- we've talked a lot about the  
7 recount process and, earlier, you said something along the lines of, normally, there are  
8 certain state rules about vote recounts, litigation, etc. I think [REDACTED] said something  
9 about the safe harbor deadline in December and you said something along the lines of,  
10 Well, it's not a hard date, it could go past that.

11           In your experience politically, traditionally, how long does the recount process  
12 last?

13           A    Oh, I mean, it depends. Again, there are 50 -- these are dusty code,  
14 election codes, in different states that you take off the shelf once every couple of -- you  
15 know, 20 years.

16           Typically, I mean they're designed to resolve election issues as fast as possible,  
17 but, you know, typically, before the electors have to vote is usually when this happen.

18           Q    Well, let me ask you this: We can both definitively agree that it's definitely  
19 on or before January 20th. Right?

20           A    I guess in theory, though, these things could go on and on.

21           Q    Past the day after which a new President is installed, for lack of a better  
22 word?

23           A    Sure. I mean, that contingent elector memo on Hawaii, that recount went  
24 back past the electors voting date. Right?

25           These things can go and on and on and you don't necessarily need a state to have

1 an outcome by Inauguration Day. Right?

2 I mean, you can still swear in a President if those votes aren't counted, but all the  
3 states now typically do have processes in place to resolve these issue prior to that stuff.  
4 So I can't imagine an eventuality where something legitimately lasts longer than  
5 Inauguration Day, but in theory, sure. It could.

6 Q So let's come back to that, because it was our understanding that recounts  
7 past Inauguration Day were pretty rare.

8 A Oh, agreed.

9 Q So we'll come back to that. A moment ago, you said that there were hard  
10 limits on how the campaign funds could be spent. What happens to the DJTFP funds  
11 that are campaign funds in terms of funds that are raised for the campaign? What are  
12 you allowed to use those for once they're in the campaign accounts?

13 A Sure. So I think I actually said there are hard campaign limits in terms of  
14 what you can raise for people. During the course of the campaign, the only limitation is  
15 going to be it can't be for personal use of a candidate. There's other limitations too, but  
16 when the money comes in to the DJTFP account, it really depends on when that occurs.

17 I mean, prior to Election Day, it's going to for electioneering activities for the most  
18 part, which is a pretty broad category of stuff related to electing -- supporting a candidate  
19 for President, his or principal campaign committee.

20 After election day, you can -- I think -- check the regs, but you can raise money for  
21 a recount and to pay off debt.

22 Q Okay. That was our understanding as well, that those were the two things.

23 So it's our understanding that immediately after the election a few days, there  
24 was a discussion about setting up the Save America PAC. Are you aware of those  
25 discussions?

1           A    Yes.

2           Q    And were you involved in those?

3           A    To some extent, yes.

4           Q    Sitting here today, what is your understanding of why the Save America PAC  
5 was created?

6           A    Regardless of whether President Trump was ultimately elected President  
7 again in 2020 or not, he needed a successor organization, like all Presidents who after  
8 their second run for office need a successor organization through which to do political  
9 activity to support candidates and causes that they believe to be important. So that  
10 conversation, I actually think had started prior to the election. I thought it occurred  
11 before November 3rd.

12          Q    Do you remember having conversations with Jared Kushner about creation  
13 of the Save America PAC?

14          A    You know, I either had conversations directly with Jared or I had  
15 conversations with Alex Cannon who had conversations with Jared, but I actually think I  
16 talked to both of them. I just can't be sure.

17               Those conversations would have been related to giving options in terms of what  
18 the best type of entity to create was. There really is only one option that makes a lot of  
19 sense, and that's a multi-candidate PAC, which Save America ended up becoming; but I  
20 was involved in conversations and may have even prepared a document -- I don't think I  
21 did, but somebody ended up doing it -- laying out what the different types of entities that  
22 you can create are and what the pros and cons are for that, campaign finance limits, what  
23 you can spend, etc.

24          Q    Yeah, and we're definitely campaign finance experts, but the gist of what we  
25 understand is that while there's limitation on what would happen if money was raised



1 into DJTTP, Save America would not have those limitations. So you would not want a  
2 bunch of money raised sitting in a campaign account. You would want it, to your point,  
3 sitting in a multi-candidate PAC that would then be a leadership PAC that would allow for  
4 more flexible spending.

5 Is that fair?

6 A Yeah. The money going into the campaign, principal campaign committee,  
7 at that point was dead money. It couldn't be spent on things.

8 Q Yeah. So do you remember having conversations regarding fundraising  
9 after the election?

10 A Yeah. We would have talked about that. I mean, the former President  
11 had a robust list that wasn't -- when you stop emailing a list or soliciting from any kind of  
12 fundraising list, it tends to get stagnant and subject to spam and all of this. I'm no  
13 expert on this stuff, but that's what our digital team indicated to us.

14 So yeah. There was talk of needing to continue fundraising after the election to  
15 keep those lists fresh.

16 Q And who was that talk with? Was Gary Coby present?

17 A Gary would have been involved in those conversations. Jared probably was  
18 involved in those conversations, Alex.

19 Q Do you remember when it was?

20 A I mean, we talked about it before the election for sure, because it was one of  
21 those things where you never liked talking about the election during election, but it was  
22 one of those things that kind of had to be discussed because it needed to happen and  
23 there some lead time to it, but I don't remember specifically when. I don't think it was  
24 one conversation. I think it was just like a series of conversations.

25 Q I know this was before your time, but were you aware that there were

1 conversations after the 2016 election where they were actually told to stop fundraising  
2 after the election?

3 A Oh, I don't remember that. Who was having those conversations?

4 Q No. I'm saying I know that was before your time, but in the context of the  
5 conversations in 2020 when you were talking with Mr. Coby, it sounds -- other testimony  
6 seems to suggest that they would need approval to continue fundraising after the  
7 election. Gary Coby could not unilaterally decide to do that himself.

8 A Sure. That's correct.

9 Q Okay. And why is that?

10 Mr. Garber. Approval by whom.

11 Mr. Clark. Well, it would have been approval by the principal. So Mr. Trump  
12 would have had to do that.

13 Mr. Garber. Okay.

14 Mr. Clark. I'm sorry. Can you repeat your question?

15 Mr. Garber. Is that what you meant?

16 [REDACTED] It's a better question, frankly. So I'll take it.

17

BY [REDACTED]

18 Q Understanding that Mr. Trump had to approve, can you tell us about the  
19 conversations that you had? It sounded like you said there were several, but just the  
20 gist of the conversations that you had about continuing fundraising after the 2020 election or  
21 leading up to and after the election.

22 A Just what I told you with respect to keeping the list fresh and the IPs fresh  
23 and kind of the technical components of continue to fundraise, you know, so it doesn't  
24 precipitously drop off and you lose the quality of the list. That was the conversation  
25 with Gary.

1           Q    And do you remember during the course of those conversations, would you  
2   have talked about the need to warm up IPs or take the list out of Salesforce? Do you  
3   remember any conversations about DataPeer or any of that at those times or did that  
4   happen later?

5           A    Oh, DataPeer happened during the campaign.

6           Q    Okay.

7           A    That was in the fall. That was a really -- I think it was a really smart idea at  
8   the time. I don't know what you know it, but DataPeer was concerned about ownership  
9   of the -- not ownership, but the custody of the President's list and the IP addresses that's  
10   sent from them which the RNC owned and Donald Trump didn't. Another party owning  
11   the IPs and sending from those IPs is great when you've got a Joint Fundraising  
12   Agreement with that person, but once the campaign has ended, that Joint Fundraising  
13   Agreement was going to go away and we'd be left without any IPs to send things from,  
14   and it takes a while to warm those up.

15           So Alex Cannon and Sean Dollman came to me in the fall of 2020 prior to the  
16   election with a plan that had apparently been in the works for a while on DataPeer,  
17   creating a company called DataPeer to create IPs or buy IPs to start doing initial sends  
18   from during the course of the campaign. So when the campaign ended, those IPs would  
19   be warmed up and you'd be ready send them out, and it sounded like a good idea to me.

20           They laid it all out for me and we did it.

21           Q    If I can go back, when we talking about the general fundraising discussions  
22   that you were having before the election about continuing fundraising and keeping the  
23   list warm after the election, do you remember having any discussions about the themes  
24   or what you would be fundraising on?

25           A    No. In terms of content, that was really in Gary Coby's wheelhouse, on

1        what worked and what didn't. It always had been.

2                You know, I supervised Matt Morgan, who ran the Legal Department which  
3        approved legal disclaimers and stuff on email sends, but in terms of content, I never really  
4        messed with Gary other than occasionally getting an email blast from him and making fun  
5        of, you know, a statement or something, just ribbing him, but I never edited content and  
6        created content.

7                Q     Actually, that's a really great lead-in to my next question, which is let's talk  
8        about the approval process for those fundraising emails, because there was a lot of  
9        people on there. I think you were on that list, and there were some inflammatory things  
10       that were said in those emails.

11                Aside from ribbing Mr. Coby about something that may have been extreme, did  
12        you have any conversations with anyone about what was in those fundraising emails  
13        versus maybe personal beliefs? I think you said earlier, you didn't believe in the  
14        Dominion voting machines, but there were fundraising emails that talked about the  
15        voting machines.

16                Did you have any conversations with anyone about what was in the fundraising  
17        emails versus what Mr. Cannon was finding or what Mr. Parkinson was finding or what  
18        the research folks were seeing in terms of fraud?

19                A     No. Again, my content approval, I wasn't on a content approval chain.  
20        We were on the legal approval chain.

21                So I didn't sign off on content and none of us were really in a position to call out  
22        Gary in terms of what that content should be.

23                Q     Who was? Based on your understanding as deputy campaign manager,  
24        what was your understanding of who was in a position to call out Mr. Coby about the  
25        accuracy or truth or lack thereof of what was in those fundraising emails?

1           A    I mean, Gary was the digital director. I mean, he ran it, and don't forget, I  
2    came in -- as deputy campaign manager, I came at the end of July of 2020, and one of  
3    things clearly not on my list was how to -- approval processes for systems for digital email  
4    sends.

5           I mean, we were not in a position to make any kind of wholesale change at that  
6    point in terms of approval processes. So yeah.

7           Q    And I will say to support that point, we have heard testimony from other  
8    witnesses would have said that you and Mr. Stepien came in and inherited, quote, a  
9    well-oiled machine that Mr. Coby had built that required no tinkering, no modification,  
10   and just ran. Would you disagree with that?

11          A    No. I wouldn't disagree with that at all.

12          Q    So going back to the question of you and Mr. Stepien, what we're trying to  
13   figure out is is it your understanding that Mr. Coby had approval over the content of  
14   those emails?

15          When they went through the approval process, was it your understanding that it  
16   was Mr. Coby's job to verify the truth or accuracy of what was in those emails?

17          A    I don't know if that's true, but he had ultimate approval over content in  
18   there. So whatever content was there, he was approving, but in terms of like  
19   verification of the accuracy of what was said in a fundraising email, I don't know who was  
20   doing that, if anybody.

21          Q    So I guess that would be my next question, is do you know, actually, if  
22   anybody was doing that? Was that anybody's actual job that they were responsible for?

23          A    I don't know.

24          Q    Who would know?

25          A    Mr. Coby.

1 Q If Mr. Coby said that it was Mr. Parkinson's job to research, Mr. Cannon's job  
2 to do legal, would you agree with those characterizations?

3 A I guess, yes. I would. I mean, I don't know to -- I know Alex was  
4 approving not copy, but disclaimers, reviewing stuff for legal accuracy. I assume Zach  
5 was doing the same in terms of verifying accuracy of emails; but, again, I don't know what  
6 Gary's actual internal process was in terms of, Hey, this email is good to send because we  
7 have signoff from these people.

8 Q But if I told you or if you found out that there was actually nobody verifying  
9 the accuracy or truth of the content of those emails regarding what they were warranting  
10 to the recipients, would that actually surprise you?

11 A I guess I don't know. I don't know. It's hard to say, because if those  
12 people were on a content approval chain, I assume there would be some kind of  
13 clearance.

14 Q You would assume that somebody was responsible for truth and accuracy?

15 A Well, no. What I'm saying is if research -- Legal was approving content as it  
16 was going out. The RNC -- and let's also keep in mind, too, like we're talking about  
17 sends that were broken down by a percentage between the RNC and the campaign.

18 If Research Departments were on those email, I would presume that they signed  
19 off on whatever kind of content there was.

20 [REDACTED] Okay. If we could put up Exhibit 4.

21 BY [REDACTED]:

22 Q This is a document that we were hoping you might be able to explain a  
23 couple of buckets on. This is a November 18th screen shot that Mr. Dollman would send  
24 around every day to a pretty consistent list, usually to Mr. Kushner and then he would  
25 copy a number of you in leadership, and they were cash position updates. Are you

1 familiar with these?

2 A Yeah. I am.

3 Q So they're largely similar with some minor variations, but they generally  
4 track the three accounts of the campaign general account, the recount legal and then,  
5 once it was created, Save America. So if -- right here.

6 So do you see where it says recount legal, recount costs for Wisconsin was \$3  
7 million?

8 It was our understanding that was literally the amount that the campaign paid to  
9 the State of Wisconsin for the recount. Is that consistent with your understanding?

10 A That jogs my memory. We had to put down, I believe a -- it was a very  
11 large seven-figure deposit on the cost of the recount. You're jogging my memory right  
12 now. So forgive me if I don't have the details perfectly right.

13 Wisconsin requires the petitioning party to pay for the recount. So I believe we  
14 had to put down a deposit that close to \$3 million.

15 Q Is it fair to say that would have come out of the recount legal bucket?

16 A Probably, yeah. I would suggested that it be paid out of there.

17 Q Okay. And you raised a very good point. Are you the person who would  
18 suggest where those things should come out of funding-wise?

19 A If asked, yeah. I mean, it was usually pretty obvious where an expenditure  
20 should come from. Sean did a pretty good -- not a pretty good job, did a very good job  
21 of tracking debt, and so splitting those buckets between recount and legal and like DJTFP  
22 general raising against debt was pretty important.

23 So wind down, there are other buckets you could kind of put these in the general  
24 account.

25 Q Do you see the second bullet point under notes where it says the Joint

1 Fundraising Agreement split is changing at midnight to 75-25?

2 A I do.

3 Q You don't happen to remember -- this is November 18th. You don't  
4 happen to remember being involved in those conversation over that split, do you?

5 A I don't remember that, but I very well could have been involved in those  
6 conversations.

7 Q And to the best of your recollection, given the format, does that mean it  
8 would have be 75-25, the campaign-RNC?

9 A I don't remember his numbering convention.

10 Q Okay. So sitting here, you can't tell which is which?

11 A I can't.

12 Q Okay. And is that something that Mr. Kushner would have negotiated?  
13 You would have negotiated? Can you remember sitting here today?

14 A I don't remember negotiating that split, but I very well could have. Jared  
15 certainly would have been involved and I would have -- I don't think anyone would have  
16 changed the split on the JFA without letting him know or involving him in the  
17 conversation.

18 Q So the way that you said that, Mr. Kushner certainly would have been  
19 involved, it was our understanding that Mr. Kushman was brought in to really have an  
20 active role in the budgeting process and to kind of manage the -- understanding that you  
21 and Mr. Stepien were, in fact, the campaign manager and the deputy campaign manager  
22 and that you were responsible for the budget, it was our understanding Mr. Kushner had  
23 a very active role in that, working with the two of you; is that correct?

24 A Yes.

25 Q Oh --



1           A    After Bill --

2           Q    I'm sorry.  Go ahead.

3           A    After Bill was named campaign manager and I was named deputy campaign  
4   manager, as I mentioned earlier, one of the things I was put in charge of was budget, and  
5   Jared and I were attached at the hip.

6                There had been serious budget control questions prior to that from the previous  
7   campaign manager.  So Sean Dollman and I worked really closely together on developing  
8   a budget and a budget control system, and I worked with Jared, I mean, a lot just to make  
9   sure that the money -- that everyone had their arms around what we were spending,  
10   where it was going and whether we had it and all that kind of stuff.

11          Q    And I understand that there were issues with Mr. Parscale.  That's kind of  
12   before our time in terms of relevance here, but starting during that July 2020 period  
13   when you and Mr. Stepien started, was it pretty consistent at that point that you and Mr.  
14   Kushner were regularly working on the budget issues?

15          A    Yes.

16          Q    And how often do you think you met with Mr. Kushner about the budget?

17          A    We would meet in person once a week and often times more than that,  
18   spoke on the phone.  Bill probably talked to Jared more than I did, but, you know, we  
19   would relay messages, and I was constantly working the budget with Sean.

20                So these updates were part of just keeping him informed, and yeah.  I mean, it  
21   was a couple days a week, probably.

22          Q    And Mr. Kushner was very active in the fundraising updates, wasn't he?

23          A    I'm sorry.  I don't know what the fundraising updates are.

24          Q    The amounts of -- do you see where it says fundraising, where it says funds  
25   in transit and the cost of fundraising?

1           A    Yes.  He was very involved in that.  He worked pretty close with Gary, too,  
2   on these items.

3           Q    Was it your understanding that Mr. Kushner regularly updated the President  
4   on the financial issues?

5           A    I don't know if I had that understanding at the time, but I assume so,  
6   because somebody would have and I wasn't the one doing it.

7           Q    Well, let me ask a better question.  What was your understanding of Mr.  
8   Trump's interest in the funds raised, like the budget, the finances of the campaign, if you  
9   will?

10          A    I would say pretty interested as far as candidates go.  I've done this a lot,  
11   and some candidates are very interested.  Some candidates, their eyes would glaze over  
12   when you start to talk to them about a budget.

13          I would say he was right in the middle.

14          Q    So this email is, I believe on November 18th, and do you see under the DJTFP  
15   general column, it says outstanding payable and it's a little under \$34 million?

16          A    Yes.

17          Q    So this is a couple of weeks after the election, and I'm not asking you to  
18   remember specifics, but generally, what was the \$34 million in payable that the campaign  
19   had left two weeks after the election?  What kind of things would be in that bucket?

20          A    Oh, boy.  So campaigns have a ton of trailing invoices.  I mean a ton of  
21   trailing invoices.  The smallest on campaigns has tons of trailing invoices, mean you do  
22   an event in the begin of October and a vendor who did work for you, a small mom and  
23   pop shop, they don't bill you until the end.

24          Porta-Potties come to mind.  We had all these rallies, and the guy who did all the  
25   Porta-Potty vendors didn't send us his bill for like two and a half months, until October,

1 and it was like \$8 million. That's just like a gut punch at end of a campaign.

2 So you had a lot of those trailing invoices coming in. I believe we paid  
3 unlike -- so television, you pay up front. Okay? If you want to put a TV ad on the air,  
4 you pay them and they put it up.

5 Digital, you do the digital buy. They put the digital ad up and you pay that after.  
6 I presume a lot of 33 million is to Google for Google search for October. That's probably  
7 due at the end of November.

8  Okay. That makes a lot of sense.

9 If we could put up Exhibit No. 5.

10

BY 

11 Q The next day, a similar email, same cash position update. Again, this is  
12 from Mr. Dollman out to the group, and it says: "Note: I met with Justin this morning  
13 about the recount/legal budget and we should have something today that will display  
14 where we are on spend and remaining budget."

15 So this is the next day. Do you happen to remember meeting with Mr. Dollman  
16 that morning to discuss that recount legal budget?

17 A I don't remember that meeting, but I met with Sean multiple times a day.  
18 So I don't doubt that we had it.

19 Q On november 19th, what would the concern with budget have been when so  
20 much money is being raised post-election?

21 You guys had some of your biggest days, I think, in the days right after the  
22 election. So Save America, at this point, already has 29 million cash position. What is  
23 the budget concern right now post-election?

24 A Well, I can see the recount thing being an issue at that point. Don't forget,  
25 at that point, you had a lot of new lawyers coming in. As I mentioned, Matt and I were

1 doing a lot of negotiating, and I think there was a concern that nobody had their arms  
2 around the spend side of the recount/legal budget.

3 You know, it wasn't an income concern. It was a spend concern. So don't  
4 forget like we have to spend that on recount and legal. If we didn't spend it all, that  
5 money can get transferred to the RNC legal proceedings fund.

6 So like it wasn't like, Oh, it's dead anyway, why not just spent it. It was like we  
7 needed to have our arms around what we're spending it on, making sure we're spending  
8 it on -- you know, not like wasting money so there's something left over.

9 Q So to be clear, that recount/legal fund, that is what you would have used for  
10 election-related litigation or recount and that's all you could use it on. Correct?

11 A That's my understanding, yes, but any surplus could be transferred to the  
12 RNC legal proceedings fund.

13 Q But it couldn't be transferred to, say, Save America or DJTFP General?

14 A Definitely not DJTFP General and I don't think Save America.

15 Q So is it fair to say it was kind of a use it or lose it or give it to RNC?

16 A That was -- yes. I think that's fair. That's a fair characterization.

17 [REDACTED] Okay. If we look at email number -- Exhibit 6.

18

BY [REDACTED]

19 Q This is a November 27th email from Mr. Dollman to Mr. Kushner, and in the  
20 chain, I believe, there's -- if you scroll down a little bit, on November 29th -- right there.  
21 Yeah.

22 So Mr. Kushner email you guys and says: "I'm traveling for a few days. When I  
23 get back, let's discuss a new system for paying bill where we need DJT to sign off on them.  
24 I want to create a tighter process for going forward. We should have a budget we  
25 approve and it shouldn't go to him unless approved by Sean and Justin and maybe Alex."

1 I'm assuming that Sean Dollman, you, and Alex Cannon. Is that a fair  
2 assumption?

3 A That's fair.

4 Q And what was the point of this process, to the extent that you know, in  
5 terms of what Mr. Kushner wanted to accomplish with this?

6 A I think he just wanted to get an understanding of, again, like -- before Rudy  
7 and his team came in, Matt would have known to the penny what we owed lawyers, what  
8 we were paying lawyers, who they were. When Rudy and his team came in, as I  
9 mentioned, we were just getting engagement letters thrown at us from different  
10 directions and looking for approvals on whether we should do things or not.

11 So we wanted to create a budget, like here's what we're going to spend our  
12 money on. When I say "we", I mean Jared and I think he was right about that, because  
13 just things were moving so fast that if you didn't have a budget control on this stuff, you  
14 were just going to start setting money on fire and that just didn't make any sense.

15 Q And correct me if I'm wrong, but other testimony that we've gathered  
16 suggested that there might be things that would go to the President without anybody  
17 looking at it first or maybe there weren't the strictest controls before things went to the  
18 President for him to sign off on.

19 A In terms of expenditures from the campaign?

20 Q Yes.

21 A So there were a few engagement letters that I believe like -- that's hard to  
22 say. I don't know. Expenditure approval --

23 Q Well, and you actually hit on it, attorneys that may have come in that the  
24 President said okay, but that didn't get vetted or approved before expenditures were  
25 approved.

1           A    Yeah, but that's a little different, because the campaign still had to sign an  
2   engagement letter.   Right?

3           So if he had approved something, you know, we would get an engagement letter  
4   and review it and negotiate with these people, and it wouldn't necessarily get done.  
5   You're talking about a pretty tight time window here and, you know, all of these  
6   engagement letters came to me from someone other than directly through me or Matt.

7           So we were looking at them, and if the President approved it, I would call Jared.  
8   I think Jared was looking for a process here that wasn't that, that was a little more  
9   organized.

10          Q    That makes sense.   Is it fair to say that he seems like a very organized  
11   gentleman and who likes processes and procedures?

12          A    Yeah, and I shared that with him.   Chaos is just hard to deal with on a  
13   budget.

14          [REDACTED] I totally understand that.

15          If we could turn to Exhibit 8.

16          BY [REDACTED]

17          Q    This is an email the same day.   I believe it's in response to the email where  
18   Mr. Dollman said that you guys were going to sit down and get your arms around a  
19   recount budget.

20          So this is from Mr. Dollman to Mr. Kushner and others up top, but it's not really as  
21   relevant.   So this is Mr. Dollman writing:   "Jared:   Justin, Alex, and I updated this just  
22   now.   We think it accurately reflects remaining expenses and total spend to date.   The  
23   big drivers on spend to date were the three million to Wisconsin, cost of fundraising, and  
24   the data project.

25          The only item we can't estimate are the expenses for Team Rudy.   We have yet

1 to receive anything from them. As you can see, after remaining expenses, we estimate  
2 \$9.87 million remaining."

3 So I just want to ask you clarify a couple of things for us. I'm assuming if you  
4 scroll down a little bit, this is the cash position on December 8th. I'm assuming this is  
5 recount/legal budget that we've been seeing that this would have come out of.

6 A Yes. That's what this is.

7 Q Okay. Then if you see the line that says Cost of Fundraising, I'm assuming  
8 that's when you were talking about the cost of digital or actual fundraising costs.

9 A I don't know what that line item is. It must be. It must be the cost of  
10 fundraising coming in, but I actually don't know what that is.

11 I remember this document getting created, because we actually settled on this,  
12 because we needed something simple that we could update easily that could be  
13 replicated from day to day compared to a prior day. So like the remaining expenses  
14 column could go up or down. The spend to date would then be added based on that,  
15 and then you'd be able to have -- those were the variables in addition to the cash position  
16 on that day, the cash position at the end of day, and then the cash position at the end of  
17 the day would match the cash position at the beginning of the day for the next  
18 spreadsheet.

19 So I remember creating this and working on this with Sean and coming up with  
20 like a decent estimate for what we have. I don't remember what fundraising is, though,  
21 what that line item is for.

22 Q I'm assuming it's the cost of fundraising. Right?

23 Because it's an expense related to fundraising?

24 A I assume so too, but I don't know for sure.

25 Q Okay. And when it says the data project, in the email, it says data project,

1 but I believe on the line, it says national/data. Do you know what the data project was?

2 A I referring to it earlier, which was Alex Cannon's work verifying or, you know,  
3 finding out the answer to issues with respect to dead voters, national change of address,  
4 you know, real data sensitive things that were being brought up with respect to election  
5 contest.

6 Q And do you know what the Ops row meant?

7 We assumed operations, but we weren't sure which operations.

8 A Ops is going to be short for operations in all of our budget. I just don't  
9 know what our operational expenditure was on that.

10 I mean, we did have ongoing costs, but \$725,000 seems high in terms of remaining  
11 expenses. Like we had -- there was staff at the campaign. You know, there are  
12 printing costs, I guess.

13 I don't remember exactly what made up that number. To be really fair, I was a  
14 big believer in you never went to come in under on the expenditure side of a budget. It  
15 could very well have been a plug number that we just made bigger so we didn't have to  
16 come back with a crazier number on something else and could just reallocate to there.

17 I don't know. I'd have to look at it, going forward and back, and I just don't  
18 remember the conversation we had about it.

19 Q And if you look at that row that says National, I'm assuming that's just kind  
20 of like a bucket for national-related expenses that might come up.

21 A I don't remember specifically.

22 Q The reason I ask is because if you scroll back up to the bottom of the email,  
23 he explicitly says that you couldn't estimate expenses for Team Rudy. Did they ever  
24 submit anything budget-wise or how would you know how much that cost?

25 A We didn't. They never did provide a budget in terms of their expenses for



1 us.

2 Q Do you know if they were ever paid for their work?

3 A I don't think -- I think their expenses were paid. I don't know. I don't  
4 believe they were paid for their work.

5 Q Do you know how their expenses were paid, like through whom, through  
6 what entity?

7 A I don't remember.

8 Q And to the extent that you know, the Spend to Date column appears to be  
9 funds that have already been spent in those states. Was that for law firms that were  
10 conducting litigation in those states or what was that spend for, to the extent that you  
11 can remember?

12 A The largest expenses would have been for law firm expenses, but I don't  
13 know specifically what made up those numbers.

14 [REDACTED] Okay. If we could turn to Exhibit 18 on page 2.

15 BY [REDACTED]:

16 Q So this is an email -- actually, if we can just go up a little bit, I want to scroll a  
17 little bit slowly so we can go through the who, what, when. If we can go up a little bit to  
18 the top, this is an email dated December 22, 2020. If we go up a little bit, you can see  
19 this email.

20 It's from Mr. Dollman to Mr. Kushner and the team, and it's cash position update  
21 dated December 22nd. If you scroll down, Mr. Dollman adds the note above the  
22 standard chart.

23 He says: "Below is a screen shot of the current positions for the three accounts.

24 Note: This includes the \$4.975 million media buy invoice that we just received."

25 Now if you scroll down, would that have been in recount/legal under outstanding

1 payables?

2 A Good question. I don't know. Like I said, if we had a media buy and it  
3 television, you wouldn't really record that as a payable at any point, because it would  
4 probably just be right out the door, but if it was in between the time when the invoice  
5 showed up and when it was paid, it could have been in the outstanding payables bucket.

6 Q To the best of your knowledge -- so I don't know if you're aware. Do you  
7 remember the \$4.975 million media buy invoice that came in on December 22nd?

8 A I don't remember the invoice specifically. I remember that there was a  
9 media buy component to this. I don't remember that specifically or the number  
10 specifically.

11 Q Well, sorry. Let me be clear. I'm not asking about the number. I'm  
12 saying do you remember the big \$5 million media buy of election fraud-related  
13 commercials that the President and Rudy Giuliani wanted to put on TV?

14 A I do.

15 Q Do you remember seeing the commercials? I believe they went on OAN  
16 and Newsmax.

17 A I did see them.

18 Q Would you have qualified those as recount/legal?

19 A I mean, yes. I can get there.

20 We would -- we work a lot with -- we had a lot FEC compliance lawyers on our  
21 team, and if we were comfortable making that expenditure out of recount/legal, then I'm  
22 sure we were comfortable with it.

23 Mr. Garber. Is that something you in particular --

24 Mr. Clark. I don't remember that. I don't remember if I specifically approved it  
25 or not, but if I did, we would have done our diligence on it and had been pretty

1 comfortable with the outcome.

2 BY [REDACTED]:

3 Q Okay. We'll come back to that, because the question of what qualifies  
4 recount/legal, I'll come back to that in a moment.

5 If we could go up to page 1, there's a line that I believe Mr. Kushner says is  
6 the -- oh, here.

7 He says: "Thanks, Sean. I'm assuming the reason why Save America has been  
8 stagnant is chargebacks."

9 What are chargebacks?

10 A Chargebacks are so if someone wants to not have their donation -- so you  
11 make a donation to a political campaign for a hundred dollars. Okay. You decide, you  
12 know what, I don't want to give that money anymore. There's two ways to effectuate  
13 doing that.

14 One is a chargeback, which is you call your credit card company and you say that I  
15 don't agree with that charge on my credit card and, presumably, the credit card company  
16 puts a hold on it. What happens then is they then go to the credit card person who  
17 made the charge, the company, who then says, No, no, no, they did pay for that, and then  
18 that dispute typically gets resolved in favor of the merchants.

19 I think we had a policy to not fight chargebacks. The other way to do it is a  
20 refund, call the campaign and give a refund. We were very open about doing both,  
21 which a lot of campaigns are not.

22 Q So if you scroll up, I believe Mr. Dollman responds to Mr. Kushner and says:  
23 "Correct. Chargeback have negatively impacted Save America by nearly \$2 million since  
24 the 14th of this month. Another factor is that recurring has moved from weekly to  
25 monthly."

1           So let's just pick off that last piece. Do you know what that means, recurring has  
2 moved from weekly to monthly?

3           A    Yeah. So when you make a -- when you give on line, there's an option to  
4 make it a recurring donation. So I give \$10 to a political campaign. I then have a box I  
5 can check -- sometimes it's pre-checked -- which says I want to make this a recurring  
6 donation.

7           This indicates to me that we changed the recurring donation check box on Save  
8 America from a weekly, do you want to make this a recurring donation weekly, to one  
9 that was monthly.

10          Q    And do you remember -- to the extent that you remember those -- it sounds  
11 like that was a discussion. Do you remember those discussions?

12          A    Vaguely. I would always defer to Gary in terms of the best way to  
13 appropriately do that. I didn't -- at that point, I wouldn't have cared much. I don't  
14 remember why we did that.

15          Q    Is it possible because it's now December 23rd -- it's been a month and half  
16 since the election and you're taking fundraising emails recurring weekly for people for  
17 what at this point?

18          A    I'm sorry. I don't follow your question.

19          Q    Well, if I understood you correctly, you're saying it was a recurring donation  
20 that was happening. The default was weekly and now you changed it to monthly, and  
21 you said I don't know why we would have changed at that point.

22                This is now December 23rd, over -- about a month and a half after the election.  
23 What would people need to be donating weekly to as opposed to monthly if the election  
24 was over?

25          A    I mean, this was for Save America. So Save America is not a principal

1 campaign committee anyway. It's for a multi-candidate PAC, but I don't remember the  
2 reason we switched it from weekly to monthly.

3 Q And do you have any -- do you know why the chargebacks seemed to have  
4 increased by nearly \$2 million since the 14th of that month, so about seven days, \$2  
5 million in chargebacks, it sounds like?

6 A I don't know why. I don't even remember why the -- what the theories  
7 were on it, but, I mean, it is -- it occurred.

8 Q So let me come back the theories on that in a second. In the email above,  
9 Mr. Coby says -- if you scroll up, he responds and says: "Pushing a lot as well. Average  
10 daily growth, 1.2 million."

11 Do you know what he's referring to when he says "pushing a lot less"?

12 A I assume that means fewer emails and text messages sent.

13 Q So pushing a lot less in terms of the things that would get people to donate?

14 A Yes.

15 Q And average daily growth, 1.2 million, is it your understanding that that was  
16 low or where does that fall? Is he saying that it's low now?

17 A I wouldn't characterize it as low or high. I don't remember the context of  
18 that number.

19 Q They may have just be just so you know, now this is the average daily gross?

20 A It could have been, yeah.

21 Q Okay. So the reason I asked about the recount issue is because since  
22 January 21, 2021 -- so that the day after Inauguration in 2021 -- to present day, the Make  
23 America Great Again PAC has PAC spent five and a half million dollars on recount  
24 expenditures. What are you spending on recount-wise, which is, my understanding, the  
25 money left over that was raised from the campaign that got moved over to MAGA PAC?

1           What is still being recounted? I think the most recent expense was \$600,000 in  
2           March to a company called 2M Document Management and Imaging, and to the  
3           extent -- I don't know if you're still involved in this, but if you are, what is still being  
4           recount/legal in March 2022 of a 2020 election?

5           Mr. Garber. See, that might be -- I think now we're getting into substantively  
6           privileged things.

7

BY

8           Q    Generally, what kind of expenses are recount/legal nearly two years after  
9           the election?

10          Mr. Garber. Again, I think you're asking substantively what are legal funds being  
11          spent on, and I think that's privileged and work product.

12          No, no. I'm not asking specifically. Earlier, he said he had a lot of  
13          experience with campaigns. Let me rephrase it.

14

BY

15          Q    In the past, have you ever had recount/legal fund being spent two years  
16          after the election?

17          A    I haven't had a lot of -- there's not a lot of campaigns that have recount/legal  
18          funds. Generally, you can spend recount/legal money on something that has significant  
19          nexus, significant enough nexus, to the recount and recount-related activities.

20          Q    I guess this is where I don't do enough politics to understand, but after the  
21          election is over and there's a duly-elected President, what is the type of recurrent  
22          activities that are still happening in that bucket?

23          And you don't have to be specific about what you've actually spent it on, but just  
24          from you experience, a type of expense that's still happening in recount/legal two years  
25          later.

1           Mr. Garber. Well, have you had an experience where there's been that kind of  
2 expenditure or is this unusual.

3           Mr. Clark. This is an unusual set of circumstances. It's pretty unique.

4           Mr. Garber. I think the predicate of the question is an issue.

5

BY

6           Q Well, I guess the predicate question would be do you need somebody  
7 continuously saying that an election is fraudulent in order to justify fraudulent -- excuse  
8 me -- in order to justify recount/legal expenses for an election that happened two years  
9 ago?

10          A No.

11          Q If President Trump said tomorrow the election wasn't stolen, Biden was the  
12 duly-elected President, you could continue spending recount/legal expenses out of that  
13 account?

14          A You bet. The two are not related.

15          Q Okay. That's helpful to know.

16               I wanted to turn to the email. So you're not going to remember this and I don't  
17 expect you to because we put them up so quickly, but when we showed you some of  
18 these cash position updates, the one on November 17th had the Save America cash  
19 position as 18 million and change. There's others that we have that show that as of  
20 January 6th, the cash position is \$76 million, and as of January 13th, the cash position is  
21 all the way up to \$77 million.

22               Do you remember getting those emails?

23          A I'm sure -- if I'm on the distribution list, I'm sure I did.


24          Q Do you remember having conversations with people about how much  
25 money Save America was raising after the election leading up to the events on January

1 6th?

2 A I don't remember specific conversations I had with people, but I would have  
3 had conversations with people, I'm sure.

4 Q Do you remember reporters contacting you and Mr. Murtaugh, asking a lot  
5 of questions about the disclaimers at the bottom of the emails where the funds were, in  
6 fact, going to Save America as opposed to the Election Defense Fund that was in the body  
7 of the emails?

8 A You know, vaguely. You're jogging my memory on that. We got a lot of  
9 reporter inquiries, and stuff about budget always came to me. I vaguely remember that.

10  Yeah, and trust me. I'm not doing this to try to brain tease you, but  
11 at 4:30 with a hard stop, the value of putting up four or five reporter emails to try to jog  
12 your memory, I'm just trying to truncate that.

13 So let me actually put up Exhibit 24 and I'll see if -- while we're putting up Exhibit  
14 24, there are emails where Mr. Murtaugh is getting reach-outs from reporters who are  
15 asking if the real purpose of Save America is to raise money for a war chest or to support  
16 other candidates. They talk about the fundraising campaign being misleading because it  
17 says for Election Defense Fund, but it's going to the leadership PAC.

18 So I'm trying to put up an email that tries to explain all of that, and if you -- and,  
19 actually, this is -- if we scroll down to the bottom, let's start at the bottom.

20 BY :

21 Q This is a reporter from "The Washington Post" and he's talking about the  
22 Trump operation raising more than \$150 million since the election and he's looking at the  
23 breakdown of where the money went with the PAC, RNC, etc.

24 "Can you tell us where you plan on spending the money? Some outside critics  
25 say it's unfair to ask small-dollar donors to give so frequently to help the President when



1 a lot of it won't go toward legal expenses. What do you say to those concerns?"

2 I will proffer to you that there are a number of these communications from  
3 reporters to Mr. Murtaugh. So this was, seemingly, a commonly-asked question when  
4 people started noticing the change in disclaimers.

5 So if we scroll up this dated November 30, 2020, and Mr. Murtaugh writes: "Still  
6 ignore?"

7 I will just say to you, a lot of the other emails are dated November 11th and  
8 November 24th. So there are emails where he has been forwarding this you and to  
9 others saying what is our position on this and they have been taking the position to  
10 ignore, so just for context of why he's saying "still ignore".

11 Is that fair? Does that sound consistent with what you remember?

12 A Sure. It does.

13 Q If you scroll up, I believe that might be -- who is that responding?

14 Oh. It's you responding. So you respond to Mr. Murtaugh and you copy and  
15 loop in Dollman, Jason Miller, I believe, and Bill Stepien, and you say: "I would still say  
16 no comment, but I also don't know if that number is correct and whether it's something  
17 we want to inform if the story is going to get written anyway."

18 Was there a concern that there would be a story coming out talking about where  
19 the money was actually going as opposed to election litigation defense -- election  
20 litigation expenses?

21 Excuse me.

22 A I don't know if there was a concern or not. My default was usually no  
23 comment on money. In campaigns, we don't talk about expenditures. We don't talk  
24 about what we spend on TV, and my position was we don't need to talk about this.

25 I'm also indicating in there that I didn't know if the number was right or not. So I

1 wasn't able to really talk about it, which is probably why I added Sean, and I'm sure I  
2 added Jason and Bill for their insight into like whether we should talk to the press about it  
3 or not.

4 Q If you scroll up, I believe Mr. Murtaugh responds on December 1st:  
5 "Dollman agrees".

6 If we keep scrolling, there's a little bit of confusion, still no comment. Then  
7 actually stop for one second.

8 If you go back down a little bit, Mr. Murtaugh says: "I side with no comment.  
9 He's going to write about the split, and if we say stuff about legal expenses, it will serve to  
10 highlight the argument that the fundraising pitch is misleading."

11 Our reading of that, and I just want you to agree or disagree or tell us why we're  
12 wrong, is if you look at the previous charts we were looking at regarding how money was  
13 actually in that recount/legal bucket that would be used for recount/legal expenses, it  
14 was quite low. I think, if you remember, it was 10 or 13 million dollars; whereas, Save  
15 America, because of the change in the disclaimers and the split, got all the way up to -- I  
16 think you saw of them that said \$70 million.

17 So when Mr. Murtaugh says "He's going to write about the split and if we say stuff  
18 about legal expenses, it will serve to highlight the argument that the fundraising pitch is  
19 misleading", it sounded like what he was saying there is if you look at these emails that  
20 say contribute to the official Election Defense Fund and we show them how much money  
21 is in the Election Defense Fund versus Save America, it will only highlight that the  
22 fundraising is misleading.

23 Is that an unfair read of Mr. Murtaugh's comments?

24 A With one exception. It will highlight the argument that the fundraising  
25 pitch is misleading. I don't think Mr. Murtaugh is saying the fundraising pitch is

1 misleading.

2 Q Okay. And that's fair. I understand the modification there.

3 If you scroll up, I believe that's JM, Jason Miller's initials. He asks Mr. Dollman  
4 what are the reporting deadlines, and he says: "If will be tougher to dodge such  
5 answers after reporters can find it themselves."

6 Understanding that you may remember that exact email, sitting here today, what  
7 do you think he thought you needed to dodge?

8 A I think it sounds inquiries from a reporter, but I don't think that's a unique  
9 statement with respect to any inquiry that he would have received. It's not a weird  
10 statement from anybody.

11 Reporters were hounding us all the time about fundraising and money and digital  
12 fundraising, and we got closer to reporting deadlines, everyone wanted to break the story  
13 about what the number was, and so I think Jason was trying to get a sense of what the  
14 reporting deadline was so that we can, you know, have at it and make a determination.

15 Q Do you think there was any concern that when the FEC reports came out and  
16 reporters could find where the funds had gone versus where the fundraising email had  
17 represented they were going, do you think there was concern about the  
18 questions -- dodging the answers to those questions then?

19 A Well, there would haven't been questions then. I think that's what he's  
20 getting. Like the number would be the number. They wouldn't need a statement from  
21 the campaign at all. They could make their own -- draw their own conclusions with  
22 respect to money and where it was.

23 Q If we scroll up one more, I believe there's an email at -- it's the top one. I  
24 think that's Mr. Miller. He responds on November 30th and says: "Welp, sounds like  
25 we have 72 hours to come up with the messaging game plan."

1           What do you think he meant there?

2           A     Just what it says. I don't --

3           Mr. Garber. Can we scroll up for context, if Justin is on these emails.

4           Mr. Clark. I think that might actually be the last. That may be the top. I think  
5 you just read the entire chain.

6           Mr. Garber. Okay.

7           [REDACTED] Oh, no. There we go. That was my next question. So you're  
8 skipping ahead a little bit. We're going to keep going, actually. I'm just kind of asking  
9 him as we go. We just don't have time -- I'm sorry -- kind of like sit and read everything,  
10 but we're going to read it piece by piece.

11           BY [REDACTED]:

12           Q     So it sounded like Mr. Miller was saying they needed time to come up with a  
13 messaging game plan. I interpret that in comms speak as, basically, like how to message  
14 it better than the reporters are asking it. Is that fair?

15           A     I wouldn't characterize it -- I would characterize it as what message does the  
16 campaign want to put out and what the game plan is to do that.

17           Q     That's fair.

18           If you scroll up one more email, it says -- I believe this is Mr. Murtaugh responding  
19 to Jason, Mr. Dollman, and he copies you and Stepien, and he says: "We should talk  
20 tomorrow about whether to just announce this by press release like we would any other  
21 fundraising announcement. If we have the numbers, we can discuss how the  
22 breakdown among entities needs to be messaged, also key, as Jason pointed, that POTUS  
23 is on board on how it will be described."

24           Do you remember having conversations with the former President about how you  
25 would describe the issues of the Save America fundraising?

1 A I don't know.

2 Mr. Garber. Is the last email? I think, in fairness, if Justin is on the email chain,  
3 we should look at the whole thing. Is this the last one on the chain.

4 [REDACTED] I would have said yes, but a minute ago, I was. So let's scroll up,  
5 because I did think this is the last one.

6 And it is.

7 Mr. Garber. Okay. Thank you.

8 Mr. Clark. I don't remember having any conversations with the former President  
9 about this issue.

10

BY [REDACTED]

11 Q Do you remember the press release that you issued and gave to Fox News  
12 about the funds raised by Save America?

13 A I don't remember that, no.

14 Q It's okay. I know that comms wasn't your job. I was just curious if you  
15 sitting here could remember it and I'm trying to evaluate what's worth putting up in front  
16 of you at this point.

17 So let's do Exhibit 23, if we could.

18

BY [REDACTED]

19 Q And if you see where Mr. Murtaugh, it says "FY again", and my guess is if you  
20 scroll down, it's another reporter saying something about -- if you scroll down one more:  
21 "Save America has been added to the fundraising distribution. Why start fundraising for  
22 it now when the focused solicitations have been on legal challenges?"

23 If you scroll up, I think she re-ups email with Mr. Murtaugh and says: "There are  
24 some campaign finance folks who say this is a bait and switch given that the priority on  
25 the allocation is for the leadership PAC. "

1           And Mr. Murtaugh, if you scroll up, forwards it to you and says "FYI again". Then  
2           if you scroll up, and I believe if you scroll up, this is the last email that you respond to.

3           This is November 10th. So this is actually 20 days earlier than the email that we  
4           just looked at, but this November 10th, about a week after the election, and you say:  
5           "We, frankly, should have started a week ago. The President is committed to helping  
6           elect candidates that share his vision for America."

7           Can you give us some context for that to kind of understand what you were trying  
8           to communicate to Mr. Murtaugh, to the extent that you understand reading it now?

9           A     Yeah. I don't remember this interaction, but it's consistent with what I told  
10          you all before, is that prior to the election, it was really incumbent for us to make sure  
11          that we had a vehicle for him to raise money into post-election. I think this is displaying  
12          my understanding of that.

13          He should have started it on Election Day, is when the committee should have  
14          started or the day after and started raising money into it then. I mean, it's really a  
15          post-second election for a President must in the digital fundraising era, because, again, all  
16          of those IPs get stale. You've got to have a plan to be able to do it.

17          So that's why I think I said that.

18          [REDACTED] And if we could look at Exhibit 12.

19          BY [REDACTED]

20          Q     There is a November 11th email from Politico reporter, who again says -- and  
21          this one is on November 11th. If you scroll down, the Politico reporters says: "I'm  
22          writing a story on the President's new leadership PAC and the fundraising solicitations  
23          that raise money for the PAC and the recount.

24          I'm wondering."

25          I'm not sure if that's cut off on our end. Oh, there it is.

1 "I'm wondering. Experts who I have spoken to say that President Trump can't  
2 spend money out of his PAC on the recounts or other post-election legal proceedings."

3 This is a spent question, but the last bullet says: "Some are saying it's misleading  
4 to raise money for a committee marked on the website as an Election Defense Fund if it's  
5 going to a leadership PAC."

6 And if you scroll up, Mr. Murtaugh again forwards this to you and says: "Still  
7 ignoring?"

8 And you wrote back "Do we care?" On November 11th.

9 I guess my question to you why wouldn't you care at this point?

10 Let me phrase it this way: When you say "do we care", what did you mean  
11 there?

12 A I probably meant -- and I don't remember this specific interaction, but I  
13 probably meant, talking to Tim, like do you care if we don't get back to this particular  
14 reporter. Press people have relationships with reporters, and I wanted to make  
15 sure -- see if he needed to get an answer or not.

16 I, frankly, don't think that question deserved an answer. I think her  
17 understanding of what the PAC was that was being formed was incorrect and what it  
18 could do, but I think I was literally just asking like do we care if we get back to this person.

19 [REDACTED] I'm going to put up one more email, Exhibit 14.

20

BY [REDACTED]

21 Q This is November 24th. It's an email from a CNN reporter to Mr. Murtaugh,  
22 and if you scroll down, the reporter says to Mr. Murtaugh in his original email: "I see  
23 that the Election Defense Fund is directing an increasingly large share of donations to the  
24 Save America PAC rather than toward the legal efforts advertised in large print to  
25 supporters. Seventy-five percent of contributions are now going to Save America, up

1 from the 60 percent that was being funneled to the PAC last week.

2 Previously, 60 percent of contributions were going to retire campaign debt, and  
3 before that, 95 percent of contributions were going to the RNC's operating account.  
4 Why is the campaign telling its supporters they are contributing toward an Election  
5 Defense Fund if only a small percentage of those funds are actually going toward funding  
6 legal efforts?

7 How can the campaign justify directing 75 percent of contributions intended for a  
8 2020 legal fund toward the President's Political Action Committee? Is Save America  
9 funding any of these 2020 recount efforts or legal challenges?"

10 Then if you scroll up, I believe this reporter emails November 24th and then he  
11 pings Mr. Murtaugh again, I think, an hour later. Mr. Murtaugh forwards this to you  
12 three minutes later and says: "FYI. Still not answering."

13 If you scroll up, you respond back: "Good. Don't."

14 Why did you think it was good to not respond to that reporter?

15 A I mean, I generally think it's good to not respond to a lot of reporters. It  
16 probably had less to do with the content of his question and more to do with the reporter  
17 itself.

18 If Tim wasn't answering, good. Don't do it.

19 I don't know. I don't know why I said it in this particular instance, but my default  
20 is usually not to talk to the press, particularly about money.

21 Q So there's a couple of other emails, but there's no point going through these.  
22 Did you ever have concerns when these were coming in about the fundraising emails that  
23 were going out to millions of people raising money for the official Election Defense Fund  
24 that was going to Save America PAC that, certainly at the time, I don't believe was paying  
25 any money towards election defense litigation efforts?



1           A    I don't remember having -- what my concern level was at the time about  
2   these. I would have relied pretty heavily on Tim and Jason Miller to see what the press  
3   concern should be about this stuff, but my own independent judgment with respect to  
4   that wouldn't have been -- I wouldn't have -- I don't remember what it was, if anything.

5           Q    Earlier during our conversation when Ms. Lucier was asking you a number  
6   questions, I believe you made it, at least to me -- so correct me if I got the wrong  
7   impression. You made it clear that you did agree with some of the more extreme claims  
8   that Mr. Giuliani and his camp were making regarding Dominion voting machines or dead  
9   voters that were later were proven to be untrue.

10          A    A number of those inflammatory claims were what was put in those fundraising  
11   emails day after day, to the point where at one point, they were sending 25 emails a day  
12   to individuals on the campaign list who would get 25 fundraising emails a day. Did you  
13   have any conversations with anyone on the campaign staff or did anyone on the  
14   campaign staff have conversations with you about their concerns about what was being  
15   sent out in the fundraising emails versus what was being seen in terms of the validity of  
16   the statements or the falsity of statements in the fundraising emails?

17          A    I don't remember the volume going out. Again, it was not my area to deal  
18   with content or volume of sends or anything like that. Like I just wasn't.

19          In terms of approval on fundraising emails -- not approvals, but in terms of people  
20   raising concerns about it, Alex Cannon, at one point, came into my office and said  
21   something to the effect -- and he was just doing legal reviews. It was like, I can't believe  
22   we're sending this stuff out, or something to that effect. I said -- I told him he should go  
23   talk to Gary and speak to him about it, and I told him you don't need to do legal reviews  
24   on these anymore.

25          Mr. Garber. By legal review, you mean disclosure reviews.

1           Mr. Clark. Just disclosures. All they're looking for is disclaimers and is the  
2 disclaimer done the right way.

3

BY [REDACTED]

4           Q     In the conversation that you had with Mr. Cannon, did Mr. Cannon express  
5 concern about the inflammatory nature and claims that were being made in these emails  
6 that were using information that he was debunking and disproving in his research?

7           A     Well, I wouldn't say inflammatory. It was just about information that he  
8 knew wasn't correct. I don't remember specific information.

9           Q     Have you read any of those fundraising emails?

10          A     Again, I didn't review for content ever and I don't read fundraising emails  
11 that come in.

12          Q     I'm not asking you if you reviewed for content, because I understand there's  
13 like a whole list of people, but have you actually received and read any of the hundreds of  
14 emails that people were receiving in the days leading up to the election and leading up to  
15 January 6th from the Trump fundraising, the digital fundraising machine?

16          Have you read any of them?

17          A     I don't believe I have. I don't remember if I have or not.

18          Q     When Alex Cannon came to you and raised his concerns about what was in  
19 those fundraising emails, did you look at any of them?

20          A     I don't remember.

21          Q     Do you know if Mr. Cannon ever talked to Gary Coby about what was in  
22 those fundraising emails?

23          A     I don't know.

24          Q     Did Mr. Cannon ever tell you about when he was warming up the IP  
25 addresses for DataPeer, whether he was able to use the emails that were going out

1 through Salesforce or whether he, in fact, had to use the ones that were the most toned  
2 down in order for them to pass through the other email company?

3 A That rings a bell, but I don't remember the specifics of that.

4 Q Did he ever mention to you working with a company called Iterable?

5 A Yes.

6 Q And did he ever mention to you that in order to get the emails passed  
7 through Iterable, they had to take the most watered-down fundraising emails that were  
8 being sent out from the RNC Salesforce account, because, otherwise, they would not pass  
9 through Iterable's Legal and Deliverability Departments?

10 Do you remember him discussing that with you?

11 A I remember him saying that Iterable had to review all emails for content. I  
12 don't remember your characterization of the conversation quite that way, but I vaguely  
13 remember that conversation. Yes.

14 Q Did you ever speak with anyone, Gary Coby, Mr. Kushner, did you ever speak  
15 with anyone about concerns of raising all the money for Save America while the  
16 fundraising emails said that they were going to Election Defense Funds?

17 A I'm not sure I -- I don't really accept the premise of your question, because  
18 the disclaimers in those emails all said where the money was going.

19 Q Actually, I think I worded my question poorly, but I think you managed to  
20 answer it, because my question really did you ever have concerns about that fact, but it  
21 sounds like you're saying no because the disclaimers at the bottom told them where the  
22 money was actually going.

23 A Well, that's only thing that I was concerned with, the only thing I had control  
24 over.

25 Mr. Garber. And he said he can't remember reading the actual emails.

1 BY [REDACTED]:

2 Q Right, but when Mr. Murtaugh was raising all of these issues to you with  
3 reporters and people were using the word "misleading", was it your understanding or was  
4 it your feeling that as long as the disclaimer at the bottom was accurate, it didn't matter  
5 what the body of the email said?

6 A That was the only thing that I had any kind of input into, was the disclaimer  
7 on the bottom. I didn't have any input or control over content.

8 In terms of reporter questions, like I don't really worry about that in terms of their  
9 inquiries. I mean, we got a lot of inquiries from a lot of reporters that don't characterize  
10 things the right way.

11 My world and the thing that I had any kind of say in was the legal disclaimer at the  
12 bottom. As long as Matt's team that was reviewing content was getting the disclaimer  
13 right along with the -- you know, in accordance with the Joint Fundraising Agreement, I  
14 didn't have any other inputs that were going to have any impact, particularly before July  
15 and, you know, after I kind of got pushed out by the Rudy team.

16 Q And I see what you're saying. I guess I'm asking a more basic question,  
17 which is if I'm understanding you correctly, you're saying that the disclaimers in the email  
18 were accurate and the disclaimers complied with our legal obligation to tell them where  
19 the money was actually going, and you're saying I didn't review the content or the body  
20 of the email; I have no idea if the content or the body matched the disclaimer and it  
21 wasn't my job to know.

22 A And to be fair, I wasn't really -- I wasn't reviewing disclaimers either.  
23 Someone on the legal team was.

24 So my concern was with the disclaimers being correct. I was --

25 Q Right. I guess what I'm saying --

1           A     And I -- excuse me.

2           Q     I'm sorry. I didn't mean to cut you off.

3                 I did hear you say that you did not remember reading the fundraising emails, but  
4 my question is your -- I forget Mr. Murtaugh's official title. It was something-comms.

5           A     He was communication director.

6           Q     Communications director. So your communications director emails you -- I  
7 think we have at least or six of them -- reporters contacting and saying is it misleading,  
8 like you're telling the world you're raising money for Election Defense Fund, but your  
9 disclaimer says Save America; and he's not sending you the disclaimer and sending you  
10 the content and saying, you know, I just want to make sure this is okay. He's send you  
11 reporters who are about to report that you're misleading people.

12                 My question is, as the deputy campaign manager who could have gone Gary Coby,  
13 as his boss, and said --

14           A     That's not a fair description, but keep going.

15           Q     Actually, if that's wrong, tell me. Did you not think that you have to ability  
16 to --

17           A     Gary didn't report to me.

18           Q     Who did he report to?

19           A     I mean, he would have reported directly -- I'm not even sure he directly  
20 reported to Bill Stepien. Like you had mentioned, it was a really well-oiled machine, and  
21 he worked directly with Jared on a lot of approvals and a lot of things like.

22                 I don't know if Jared was approving content, but he didn't report to me.

23           Q     So when you're getting these emails that the content is misleading  
24 small-dollar donors the donate to an Election Defense Fund and that's not what it is and  
25 \$2 million of chargebacks happen after December 14th, when there's nothing to fight

1 anymore and people are donating to an Election Defense Fund that is likely futile, is  
2 nobody having conversations about the misrepresentations in the email saying this is for  
3 Election Defense Funds when it's actually going to Save America?

4 Mr. Garber. That's not what the emails are saying. The emails were from  
5 Murtaugh, saying I'm getting these press inquiries about fundraising communications,  
6 should I respond to them. I think that's what the emails were saying.

7 [REDACTED] Yes, and let me be clear.

8 BY [REDACTED]:

9 Q The emails are saying should I respond to them, and your response is do we  
10 care, don't, there's nothing to respond to.

11 I'm asking you a deeper question, which is you're seeing in the body of these  
12 emails, presumably, a constant theme from reporters that you are misleading small-dollar  
13 donors into donating money into an Election Defense Fund that is not, in fact, going to  
14 that. It's largely going to a Save America PAC, which you knew was for his leadership  
15 and future efforts; it was not going to be for litigation funds. Right?

16 A I didn't know what the money was going to be spent on.

17 Q Well, you said in your email a week afterwards we should have been saying  
18 this a week ago, that the Save America Fund -- the Save America money was -- the  
19 President is committed to helping elected candidates that share his vision for America.

20 What part of that is the official Election Defense Fund or election-related  
21 litigation?

22 A To be fair, the money from Save America could be expended on litigation. I  
23 didn't know at the time what it was going to be expended on.

24 The statement I gave is a definitional statement of what a multi-candidate PAC can  
25 do, but there are very few restrictions on what a multi-candidate PAC can spend on. I

1 didn't know what the money was going to go to.

2 Q I guess my question is, regardless of whether that \$150 million number is  
3 right, there are daily updates going where you can see this hockey stick of money going to  
4 the Save America PAC form small-dollar donors in the emails, and nobody is having a  
5 conversation whether it's misleading to millions of people to take money from an official  
6 Election Defense Fund that is not going to be spent on election defense.

7 Is anybody having those conversations other than Alex Cannon coming to you and  
8 saying are we okay with it?

9 Because that's what it sounds like. It sound like you're saying only Alex Cannon  
10 came forward and had problems with that.

11 A I don't know if that's true or not or if those are the only conversations that  
12 were happening about it. What I do know is that the digital department which is in  
13 charge of the content creation, sending it out, and didn't report to me had been pushing  
14 out emails for years before I was involved in the campaign, and me coming in months  
15 after, I had no say in the content that was being created and pushed out.

16 Q When Alex Cannon came to you and raised concerns, what did you tell him?

17 A I think I already answered that. I told him, you know, look, if you don't  
18 want to review this stuff, that's fine.

19 Q To talk to Gary Coby?

20 A Talk to Gary, yeah. You should talk to Gary.

21 Q I'm sorry. As soon as you said it, I remembered what you said.

22 In order for the content to be changed, who would Gary have had to go to?

23 A I don't know. I don't think he had -- I don't think anybody approving what  
24 his concepts were. I don't think he had to get approval from anyone in terms of  
25 fundraising.

1 [REDACTED] Can we -- there's a technical aspect I was hoping you could answer, if  
2 we could go to Exhibit 50 really quickly.

3 BY [REDACTED]

4 Q There's a December 4th email from Mr. Stepien, and this another reporter  
5 email, I believe. I think there was some question of whether there was a surplus at the  
6 time that you guys finished the election, and if you scroll down, I forget what the reporter  
7 says, something along the lines of finishing the -- he's writing about the Trump committee  
8 finishing the election with tens of millions of dollars in the bank.

9 "Do you know how much was on hand unencumbered on November 4th? I  
10 understand that some within the campaign requested \$3 million, but that you turned it  
11 down. The campaign sent out an email yesterday saying that committees had raised  
12 \$207 million post-Election Day? Can you tell the breakdown of which committee raised  
13 what?"

14 If you scroll up, Mr. Stepien, I think, tries to correct him and says two is false, and  
15 then reporter comes back and says something along the line of: "On number two, my  
16 reporting is that you were very concerned about not ending the campaign in debt and  
17 that drove many of your decisions, including not to invest more in Georgia. The bigger  
18 question is one, what was the purpose of winding up on Election Day with tens of millions  
19 of dollars in the bank. Other consultants are calling that malpractice."

20 Do you know, sitting here, if any of that is true?

21 Was Mr. Stepien concerned about not ending the campaign in debt?

22 And, actually, let me rephrase. Was Mr. Stepien or Mr. Kushner concerned  
23 about not ending the campaign in debt?

24 A I don't remember that being the case.

25 Q Okay. And was it true, to the best of your knowledge, understanding,



1 earlier, you said there's all those trailing invoices, but do you happen to know what the  
2 finances were at the time of the election in terms of cash on hand, whether it was  
3 positive or negative?

4 A It would have been positive. Well, I actually don't know. My  
5 concern -- the campaign always had a ballot sheet that was just fine, meaning the value of  
6 President's email and other fundraising lists and the rental of those or sale of those was  
7 always going to exceed any liabilities we had. Okay?

8 My concern when we took over the campaign, the issues of cash was a cash flow  
9 problem leading up to the end of the campaign to keep money on TV. So as I had  
10 mentioned, you had to pay for TV in advance, and paying for TV in advance, we needed  
11 cash to be able to do that.

12 I'll be honest with you. From the time we made our last payment for television  
13 through the end of the campaign and we hit payroll, I breathed a big sigh of relief, and I  
14 wasn't super concerned with our cash position through Election Day, because, again, I  
15 knew that the value of the assets of the campaign would exceed its liabilities, because  
16 after the campaign, it can only raise money for recount-related activities or t pay off debt  
17 and wind-down.

18 We wanted to make sure we had our arms around what the debt was. So I  
19 actually don't know what the cash -- I couldn't tell you right now what the cash position  
20 was with respect to the campaign and the debt on Election Day, but we were all in a very  
21 comfortable position that our assets exceeded our liabilities, and we trying to make sure  
22 that we accounted for everything that was any so in the event we needed to raise toward  
23 that, we could.

24 Q And that's also why the DataPeer issue was so important. Right? To  
25 make sure that you had control of that list if, post-JFA or Joint -- post-relationship RNC, it

1 wouldn't all be sitting in their Salesforce account?

2 A Well, yeah, and we would be able to use it for something. So, again, it  
3 wouldn't like start losing users as you stopped sending emails. We want to make sure  
4 we didn't do that.

5 Q And if you scroll up, I think Mr. Stepien responds: "I don't want to engage  
6 with this guy unless you think it's wise."

7 If you scroll up, at some point, Mr. Murtaugh says: "I think it's important to  
8 knock that one down if it's untrue about leaving money in the bank."

9 And Mr. Stepien responds and says: "Justin can speak best to how we spend  
10 down to the nubs."

11 I think I know what that means, but I just want to make sure. So I'm asking what  
12 does that mean?

13 A I mean, I was the guy who was like -- I wasn't approving every budget item,  
14 but I was the person who told everyone if we had the cash to be able to do it. So we  
15 spent down -- like that meant we spent down to the complete bottom of the barrel. We  
16 were, you know, going through couch cushions for money, spending money.

17 So we spent all the cash we could on electioneering activity that we had, and so  
18 that inquiry was off base from that reporter. I don't remember if I spoke to Mr.  
19 Murtaugh or not, but it was -- that's accurate.

20 [REDACTED] And if we could just go to Exhibit 11 really quickly.

21 BY [REDACTED]:

22 Q I think, earlier, you were talking about the -- yo9u said something about -- I  
23 can't remember if it was the true-up or the relationship with the RNC, but if you scroll  
24 down, this is an email chain, but if we start at the beginning, I think it will make sense;  
25 otherwise, it will be in reverse date order.

1           So the original email is -- this is from Mr. Dollman and this is early. I think this is  
2           the day of the election, and it looks like his digital daily tracker was not that good, and it's  
3           a little basic compared to what comes later. I think he improved it, but you've got gross  
4           delta, net delta, aggregate delta, conduit, net from RNC.

5           Sitting here right now, do you remember what any of that meant or what he was  
6           tracking there?

7           A     No.

8           Q     And that's okay, because it gets better, but if you scroll up, so Mr. Dollman  
9           writes this email, and I'm sorry. It spreads on multiple pages. So we kind of have to  
10          start at the top and go down, but he writes to -- later on, you can see. It's just the  
11          general group. I believe it's you, Stepien, Murtaugh, and Kushner.

12          Mr. Dollman says: "Based on today's fundraising numbers, we should surpass  
13          the amount to make us whole with the RNC at some point tomorrow morning."

14          Now, this is November 4th, the day of the election. Do you know what he's talk  
15          about, making you guys whole with the RNC?

16          A     Yeah. We had come up with some deal on expenditures with the RNC with  
17          respect to -- I think it was with respect to rallies. Don't hold me to that, but it  
18          was -- they agreed to take on some expenditure that they were allowed to take on, and in  
19          exchange, we changed the funding formula on the JFA to make them whole to the  
20          amount that they expended.

21          So Sean, I think there, is tracking what we -- when they would be made whole  
22          based on that JFA splits.

23          Q     Okay. And that makes sense, and at this point in time, this is the  
24          percentage split where there's no Save America yet. It's just DJTFP and RNC, but you  
25          scroll up, Mr. Kushner responds and says: "Can we huddle on this tomorrow? We also

1 need to balance our books and then make sure that we've dealt with 11 million overage."

2 Sitting here, do you know what he was talking about, the 11 million overage the  
3 day after the election?

4 A Yeah. I believe that was -- I think we had undershot our expenses in terms  
5 of what certain items were going cost, and so our payables were higher than we thought  
6 they were, if I'm recalling this correctly. That \$11 million was an overage in payables.

7 Q Okay.

8 A Overage meaning over what we had thought we had in terms of payables.

9 [REDACTED] Okay. And if we could go to Exhibit 16, page 2.

10

BY [REDACTED]

11

Q There's an email. This is 12 days later. There is an email from Mr.

12 Dollman to Mr. Kushner, and he says: "The majority of fundraising is going straight to

13 Save America and not the recount/legal account. We should change the JFA to 80-20.

14 Since are taking on more legal costs, our 80 percent should have a portion that's allocated  
15 to the recount/legal fund."

16 Can you explain what he means there?

17 Mr. Garber. Is Justin on this email?

18 [REDACTED] Yeah. If you scroll up, you can see the grouping that he sends it to.

19 It's the same group every time, although, sometimes Mr. Coby is added, but it's pretty

20 standard. It's usually Alex, Justin. The consistent ones are Mr. Clark and, often times,

21 Mr. Cannon.

22 Mr. Clark. Okay.

23 Mr. Garber. What was the question?

24 Mr. Clark. Yeah. Could you repeat your question? I'm sorry.

25

BY [REDACTED]

1           Q    Actually, I'm going to back up, because I think you just addressed this a  
2           moment ago when I was asking you about the making you whole. I think you said that  
3           was in relation to an RNC agreement for events, but this is, apparently, responding to  
4           that.

5                "The RNC has reached their agreed-to \$10 million for events, and since they've  
6           reached their agreed-to amount, we've received nearly four million in event costs that  
7           would have been allocated to the RNC."

8                So it looks like this is what you were talking about, maybe the dispute about event  
9           costs with the RNC.

10          A    That seems right.

11          Q    Okay. And the part I was asking you about, the majority of fundraising is  
12       going straight to Save America and not the recount/legal account, this email now is  
13       November 16th. So you've already created Save America, and I can't remember the split  
14       at this point. It might have been 60 percent. I can't remember, but now Mr. Dollman,  
15       I believe, is suggesting we should change the JFA to 80-10.

16                "Since we are taking on more legal costs, our 80 percent should have a portion  
17       that's allocated to the recount/legal fund."

18                Do you know what he means there?

19          A    I don't remember. I'm sure I did at the time.

20          Q    I was going to say I understand it's been a while. I just was curious if it was  
21       in political lingo speak that you could understand what he was getting at there.

22          A    No. I'm sorry.

23          Q    Do you remember being involved in those discussions about the 80-20 split  
24       or whether a decision was reached?

25          A    I don't remember this conversation, really. So I don't know.

1 Q And later on in the email, I think you get into the loop because, I think, Mr.  
2 Kushner actually says can we loop Justin in on this, lot of moving parts.

3 "Are you saying we are \$4 million over budget on events?"

4 So that would have been like actual rally events held with RNC?

5 A I think so, yeah.

6 [REDACTED] Okay. Then if we could look at Exhibit 17.

7

BY [REDACTED]

8 Q This is, I believe, the next day, and it's kind of same chain, but there's a  
9 email -- if you scroll down a little bit, you can see where it's -- so this is the same thing.  
10 If you scroll up, this is same chain, but this time, Jared says: "Also, I would like to  
11 compare the legal bucket to our budget so that things don't deviate."

12 I'm assuming that's the discussion about legal spend and getting a handle on that.

13 A They seem related. I don't remember specifically.

14 Q Then he says: "I also would like to go back to RNC on the split going  
15 forward, dot, dot, dot."

16 Then if you scroll up, you respond.

17 He says that at 12:26, and if you scroll up, I believe on the same day, November  
18 16th, you write back a couple of hours later: "Gary, I'll ring you on the split shortly."

19 So would you have talked with Gary Coby about negotiating the RNC split?

20 A Yeah. He was very involved, because he did digital -- I believe he did digital  
21 for the RNC and for us, and he was very close to Richard and Ronna and they listened to  
22 him. So he was useful in doing work on splits.

23 Mr. Garber. Are you asking him if he remembers.

24 Mr. Clark. I don't remember that conversation specifically, but Gary was -- it  
25 wasn't weird that he would be involved in these.

1

BY [REDACTED]

2

Q Okay. And I understood you to be saying no necessarily for that one, that

3

was why you rang him, but that, generally, you would think you would have rung him

4

because he was really involved in the splits for the reasons you stated?

5

A Yeah. I think he would be helpful when we were trying to negotiate a

6

change, because he knew the numbers better than anybody.

7

[REDACTED] Okay. So it's 5:15 and I know Ross has a 5:30 hard stop. What I'd

8

like to do, if you guys are okay with it, is a very strict five minutes. If you could just give

9

a chance to assess and regroup and we are back here at no later than 5:20.

10

Is that okay? We'll have 10 minutes left to get done everything we need.

11

Mr. Garber. Yeah. We will be on in five minutes.

12

[REDACTED]

Okay. Perfect. Thank you.

13

[Recess.]

14

[REDACTED]

We'll go back on the record at 5:22.

15

We will try to go as quickly as possible. I promise you this is the last of line of

16

questioning. We really don't want to go into another day. We're hoping to get it all

17

done today, but I'm hoping that the 5:30 is maybe flexible to 5:40, 5:45, because we really

18

do not want to do another day. If we can just get a few extra minutes today, we should

19

be able to cover it.

20

Mr. Garber. I can do 4:40. I've just got to be on something at six. So yes.

21

[REDACTED]

Okay. [REDACTED]

22

[REDACTED]

Great. Thank you.

23

[REDACTED]

Thanks, Mr. Clark. So there's just one last document that I wanted

24

to show to you and get your comment on. It's a bit of a long email chain. What you're

25

seeing here is Exhibit 45 and it's an email thread that begins on December 24, so

1 Christmas Eve of 2020.

2 [REDACTED] I want to give you a few minutes to read it, and if you could let us  
3 know after you've been able to read the portion of you, we'll scroll up so you can see  
4 each subsequent reply.

5 Mr. Clark. Okay.

6 Mr. Garber. Can you go down to the participant list so we can see that?

7 [REDACTED] There it is. Yes.

8 I believe it's pretty stationary until the very last email, which drops some of the  
9 outside lawyers and it's just among internal campaign folks, but this is a list that includes  
10 some individuals that we've discuss earlier as well some others that are known to us from  
11 other contexts as lawyers representing the campaign or the President in election-related  
12 litigation.

13 Mr. Garber. Thank you.

14 Mr. Clark. Okay.

15 [REDACTED] Okay.

16 [Witness peruses exhibit.]

17 Mr. Clark. Okay.

18 [Witness further peruses exhibit.]

19 Mr. Garber. Can you scroll just so we can who -- yeah. There we go.

20 [REDACTED] This is Mr. Clark writing, if that's helpful. It's hard to see the header  
21 and the content at the same time.

22 [Witness peruses exhibit.]

23 Mr. Clark. Okay.

24 [Witness further peruses exhibit.]

25 Mr. Clark. All right.



1 [Witness further peruses exhibit.]

2 Mr. Clark. Okay.

3 [Witness further peruses exhibit.]

4 Mr. Clark. Okay.

5 [Witness further peruses exhibit.]

6 Mr. Clark. Okay.

7 Mr. Garber. Is there any more to that email or was that it?

8 [REDACTED] It was those maybe three paragraph or two.

9 Mr. Garber. All right. Thanks.

10 [Witness further peruses exhibit.]

11 Mr. Clark. Okay.

12 [Witness further peruses exhibit.]

13 Mr. Clark. Okay.

14 [Witness further peruses exhibit.]

15 Mr. Clark. Okay.

16 [Witness further peruses exhibit.]

17 Mr. Clark. Okay.

18 [Witness further peruses exhibit.]

19 Mr. Clark. Okay.

20 [REDACTED] I think there is only one more. We've almost made it to the end.

21 So this is the last email where I noted that the rest of the distribution list drops  
22 off.

23 [Witness further peruses exhibit.]

24 Mr. Clark. Okay.

25 BY [REDACTED]:

1 Q You've had a chance to review this?

2 A Yes.

3 Q Okay. Mr. Clark, do you remember this exchange?

4 A I don't remember the contents of the exchange, but I remember it  
5 happening.

6 Q Okay. So before I ask you some specific questions about some of the  
7 comments in the email thread from you and also from others, but I'll give you the  
8 opportunity to just say, generally, any reactions to reading this?

9 A Yeah. It's kind of bringing me back to that day, which was Christmas Eve  
10 and, you know, these guys were at the end of the line. I was kind of the person who  
11 people would go to to get paid for stuff, and I was trying to, you know, get them to a spot  
12 where they would just admit that the odds of success on their theory was close to zero.

13 You know, I was frustrated that these guys were just looking for more money and  
14 handouts on stuff that was -- even if their legal theories were correct, I mean, the timing  
15 of these, it just brings me back to that day. I'll just put it that way.

16 Q Okay. I take your point that you recall this exchange being frustrating, it  
17 sounds like. Certainly, that was because you perceived that they were looking to get  
18 paid for work that you didn't perceive had a likelihood of success; is that fair?

19 A Yeah. It had no chance of success.

20 Q Okay. Did you have other concerns relating to the fact that they were still  
21 pursuing these avenues to change the outcome of the election in light of your assessment  
22 of their lack of likelihood of success?

23 A I mean, at that time, I had not really been deeply involved with these folks in  
24 terms of their litigation like through that point. When I say deeply, yeah. I mean, we'd  
25 get engagement letters and we would discuss things, but they were you know, it was kind

1 of the end of the line.

2 I don't remember why I was engaged on this email to begin with, but I know it was  
3 about -- it had to be about money and somebody didn't get paid a bill.

4 Q Okay.

5 A But I didn't really know the legal arguments. I was trying to be a little bit  
6 good cop here and box them in on the odds of success of their thing so I could go back  
7 and say we shouldn't pay these guys because they're not going to win and it's waste of  
8 time and money.

9 Q Okay. I guess what I'm just wondering is whether your frustration was  
10 related to the concept of we shouldn't pay these guys for the work or whether it was  
11 broader to we shouldn't be pursuing this work, this litigation strategy?

12 A Well, I didn't think we should be, for sure, pursuing it. You know,  
13 obviously, I didn't -- reading this on December 24th and reading it now is very different  
14 with January 6th occurring in between, but those considerations weren't front of mind at  
15 the time.

16 At the time, it was really why are we even talking about this. It's Christmas Eve.  
17 This is done and why are still having -- why do they all have their hand out looking for  
18 money.

19 That's where I was at the time.

20 Q Understood. That makes perfect sense.

21 You just brought up January 6th. So in hindsight, when you're reading this now,  
22 as you mentioned, with January 6th having happened between the time you exchanged  
23 these emails with these lawyers and today when I'm asking the questions, do you see a  
24 connection between the discussion in this email and January 6th?

25 A Well, I mean, a real connection? I couldn't characterize a real connection,

1 but the talk about, you know, violence or whatever it was is -- I didn't like reading that. I  
2 didn't remember it at the time.

3 Chaos, it talks about chaos, but I'm not sure if there's a direct connection between  
4 these lawsuits that they were, you know, trying to throw up there and that at the time,  
5 but, you know, I certainly don't like the language.

6 Q Okay. I noted that Mayor Guiliani isn't on this email thread. What was  
7 your understanding of his role with respect to this group of lawyers at this time period?

8 A I don't know. It's really weird. I don't know what the email chains were  
9 like prior to this, but there were not a lot of these with this group of people on it with me,  
10 I don't believe or at least that I remember.

11 What I make of it is that I think these guys were reporting directly to Mr. Guiliani,  
12 and when it came time to get paid, they were looking to me to get money, and I was  
13 never in the position to be prepared to just write checks to people regardless of what the  
14 money was -- you know, we're not just going to like set money on fire to do stuff.

15 So I think they were coming in with their hand out for money, which is probably  
16 why Mr. Guiliani is not on this email.

17 Q Okay. It's been widely reported, in particular to Mr. Eastman, that he was  
18 meeting -- was providing memos first about January 6th directly to the President and that  
19 in the days leading up to January 6th that he was meeting directly with the President.

20 Going back to the time period, were you aware of any of these lawyers, including  
21 Mr. Eastman, getting direction directly from President Trump?

22 A I don't -- no, not during this time period. I don't believe I made the  
23 connection.

24 Q Okay. Did you later learn any of those -- about any of those lawyers getting  
25 direction directly from the President from anything other than public reporting?

1           A    From other than public reporting, I don't know where I learned of it first.   I  
2   don't really remember.

3           Q    Okay.   So there were a couple of points here.   I won't pull the document  
4   back up unless you would like see it again just to refresh your recollection, for speed sake  
5   here, but there was one comment that you added in one of your emails that said:   "If  
6   you guys win this thing, there will be plenty money to go around, but want to make sure I  
7   articulate the financial risks on your end."

8           I wanted to ask what you meant by that.

9           A    Basically what I meant by that is we're not paying you.   Okay?

10          I was trying to relay to them that, Hey, if you guys win, everything is going to be  
11   great, boxing them in again, because their odds of success were zero at this point, like  
12   zero, and so I was just boxing them in that, Hey, look, if you guys want to take on the risk  
13   of this litigation, we'll be able to pay you after for the work you did, but I'm not  
14   guaranteeing you'll get paid for stuff right now.

15          Q    And the if you guys win this thing, that outcome would have been,  
16   essentially, changing the outcome of the election; is that right?

17          A    And the odds of success there, again, were zero, and so I knew that when I  
18   was writing that email.

19          Q    Got it.   Okay.   Understood.

20          I think after that, Mr. Chesebro, who we discussed earlier, conceded that he  
21   thought that the chances of the Supreme Court granting effective relief before January  
22   6th were one percent, which is quite close to zero which was your assessment, I  
23   understand, but then he introduces the concept of other political considerations for filing  
24   a cert petition separate and apart from whether there was any likelihood of success on  
25   the merits.

1           So either thinking back to your understanding at the time or having reread that  
2       discussion today, what is your assessment or reaction to reading that recitation about  
3       other sort of non-legal political considerations?

4           A     I didn't really -- I don't think I read anything into it, which is why in my  
5       response email, I kind of punted on that. I was like I'll convey all your assessments  
6       regarding the politics of it to the team.

7           I don't even know if I forwarded anything to any team. I forwarded that email  
8       chain to Jason Miller and Bill Stepien, but like me, neither of them were in a position to  
9       really do anything political at that point in time. So I didn't really know what they were  
10      getting at, because I wasn't privy to conversations before that about these things.

11          Q     Okay. Understanding that you were included on this email thread primarily  
12      for the purpose of somebody requesting that you approve them getting paid for  
13      something, but at that time, end of December, leading up to January 6th, did you feel like  
14      you had any ability to stop or tell any of the lawyers to cease efforts that you felt were  
15      either unlikely to succeed or inappropriate for various reasons?

16          A     I had no authority to be able to do that. The only thing I could control was  
17      money and to talk to people about how we shouldn't spend it on these things; but,  
18      fundamentally, I didn't even have control over that, because if someone had directed the  
19      money to go, we would spent it, but I didn't have authority to tell them to stop doing  
20      what they were doing.

21          Q     Who did have the authority to tell someone to stop doing what they were  
22      doing?

23          A     Probably, Mr. Giuliani and/or the President. I mean, I'm not sure who else  
24      anybody would have spoken to about it, but, definitely, Mr. Giuliani was involved.

25          Q     Okay. Did you raise any concerns or share anything with either Mr. Giuliani

1 or the President about your assessment of these legal and political efforts?

2 A I don't think I spoke to either of them about that. I mean, like I said, it was  
3 Christmas Eve. So I think I put that email down and I probably didn't discuss it again  
4 until a few days later, if at all, and I don't think I raised it with either of them.

5 I wasn't really talking to the President a lot at that point and I certainly wasn't  
6 talking to Mr. Giuliani.

7 Q Do you recall having any conversations with Mr. Giuliani or to President  
8 Trump, himself, between Christmas Eve and January 6th?

9 A I don't remember any specifics. I may have spoken to the President briefly  
10 after New Year's, but I don't -- it would have been about, you know, non-election legal  
11 things, I believe. I don't recall, but I think I spoke to him once.

12 Q Did the topic of January 6th, the joint session, come up at all?

13 A I don't remember. I just remember it because I was driving home from  
14 Michigan with my family and he called, and of course the car picked it up. Everyone was  
15 like, What?

16 You know, so I put my ear pods in. We talked for like three minutes, four  
17 minutes. I don't remember the contents of the conversation.

18 Q Understood. Okay. Do you think that the President understood your  
19 assessment at that time about whether there was anything that would change the  
20 outcome of the election?

21 A To the extent I said it to him at that very time, he probably -- he would have  
22 understood. He understood where I was coming from on the election, I believe, every  
23 time I spoke to him.

24 Q Yeah. I guess that's the better -- that's more my point. Not the  
25 conversation you had with him after New Year's, but, rather, leading up to and then

1 throughout this time period leading up to January 6th, do you believe that the President  
2 understood your assessment of whether there was anything that was likely to change the  
3 outcome of the election?

4 A To the extent that we talked about it, I'm sure he did.

5 Q Okay. There was one other point in this email that you -- let's see.

6 Mr. Chesebro writes that one part of the political chaos that he described is,  
7 quote, the public should come away from this believing that the election in Wisconsin  
8 was likely rigged and stolen by Biden and Harris, who were not legitimately elected.

9 Do you remember any communications with either lawyers or other  
10 representatives of the campaign during this time period about creating a perception with  
11 the public about the election being stolen?

12 A I don't remember any specific conversations about that or generalized. I  
13 just don't remember at the time.

14 Q Okay. And did you understand that to be a consideration for those who  
15 were pursuing election litigation on behalf the Trump Campaign during this time period?

16 A I'm sorry. I'm not following. I'm not tracking your question.

17 Q Sure. Mr. Cheseboro, a lawyer for the President who we've talked about  
18 today, was saying that one of the political kind of objectives for filing the cert petition was  
19 to create the public perception that the election was stolen. That's my paraphrase, but  
20 do you remember that being a consideration connected with the litigation, those who  
21 were pursuing it under Mayor Giuliani?

22 A I don't remember that. The email I just read is the first time. It doesn't  
23 even jog my memory.

24 So I don't remember that, those conversations.

25 Q Okay. That's great, and there's one email that you wrote that you sort of,



1 as you just referred to, kind of summed up the political judgment related to January 6th,  
2 and you listed several items. You said that you knew and also that it was publicly  
3 reported at that time that alternate slates had been submitted, votes were being  
4 whipped, and the arguments were in place and the not-insignificant ad buy was made,  
5 highlighting the issues in the election.

6 How did you come to understand all of those things as connected to the political  
7 considerations regarding January 6th?

8 A For purposes of that email, I was probably just listing those things out to lay  
9 out to them that, Hey, guys, like you're making political judgments and there's all this  
10 other political stuff that had happened. Like I think it was just more of a recitation of  
11 the facts of things that had happened as opposed to like coming to connect them all.

12 By that point, I mean, all of that stuff had happened and it was -- you know, it  
13 was -- they were related, obviously, but I think I was just reciting those facts to them as  
14 part of that email.

15 Q Okay. And more than just having happened, these were all things that the  
16 campaign had done or those representing the President had done with an eye towards  
17 January 6th; is that fair?

18 A In retrospect, yeah. Again, I put the January 6th connection together really  
19 late, but yeah.

20 Q Those were all part of the political plan to -- targeted towards changing the  
21 outcome of the election on January 6th. Is that fair?

22 A Well, I assume -- I presume so. I say that because say I'm not sure there  
23 was any coordinated plan.

24 "Coordinated" is a really strong word. All of those things happened and then  
25 January 6th happened. So I don't know how to characterize your question in the exact

1 right way, but I was reciting what people had done to date who were representing either  
2 the President or doing it in the name of the campaign.

3 [REDACTED] Okay. That is very helpful.

4 So thank you very much for your patience. I think -- let me just check my notes.

5 [REDACTED] I have one last question if you're done, [REDACTED].

6 [REDACTED] Perfect. I am. Yes.

7 Thank you for your patience, Mr. Clark.

8 Mr. Garber. And we're quite a bit past the stopping time, but ask that last  
9 question, please.

10 [REDACTED] I promise it will be the last one, because he said something earlier and  
11 I just wanted to clarify.

12

BY [REDACTED]

13 Q Mr. Clark, sitting here today, are you aware of any fraud that was actually  
14 dispositive in the 2020 Presidential Election?

15 A Fraud, so fraudulent activity by somebody to like defraud voters that  
16 changed the outcome of an election?

17 I'm not aware of fraud by an individual or an entity that would have done that. I  
18 do think there were serious questions. I think to this day, the Wisconsin absentee ballot  
19 stuff was correct. I think the Georgia signature verification things were really  
20 problematic. I think the Pennsylvania stuff was problematic and troubling; but actual  
21 fraudulent activity, I haven't seen like physical evidence of fraudulent activity, like  
22 nongovernmental issues that were happening.

23 [REDACTED] Thank you for that, and we really appreciate your patience. I'm  
24 sorry this ran over. We didn't realize you had a hard stop, but when we did, we did best  
25 the best of what we could with what he had left. So we appreciate that.

1            Ross, I think [REDACTED] will be in touch.

2            If you don't have any questions left for us, we will recess at 5:49 and subject to  
3 further call of the chair.

4            Thank you so much.

5            [Whereupon, at 5:49 p.m., the interview concluded.]

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Certificate of Deponent/Interviewee

I have read the foregoing \_\_\_\_ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

\_\_\_\_\_

Witness Name

\_\_\_\_\_

Date